(23)

No. 90-1205-CFX
Status: GRANTED

Title: United States, Petitioner
v.
Ray Mabus, Governor of Mississipppi, et al.

Docketed:
January 28, 1991

Court: United States Court of Appeals
for the Fifth Circuit

Vide:
90-6588

Counsel for petitioner: Solicitor General

Counsel for respondent: Moore,Mike, Goodman Jr.,William F.

12/18: Ord. granting ext. of time to file, to 1/26, by Scalia, J. (CITED). NOTE--1/26 was a Sat.

Entry	Date	Note	Proceedings and Orders
1	Dec 17 1990	G	Application (A90-469) to extend the time to file a petition for a writ of certiorari from December 27, 1990 to January 26, 1991, submitted to Justice Scalia.
2	Dec 18 1990		Application (A90-469) granted by Justice Scalia extending the time to file until January 26, 1991.
3	Jan 28 1991	G	Petition for writ of certiorari filed.
5	Feb 5 1991		Order extending time to file response to petition until March 6, 1991.
6	Feb 28 1991	G	Motion of NAACP Legal Defense and Educational Fund, Inc. for leave to file a brief as amicus curiae filed.
7	Mar 5 1991		Brief of respondents Ray Mabus, et al. in opposition filed. VIDED.
10	Mar 5 1991	G	Motion of 17 Afro-American Students who formerly attended University of Mississippi for leave to file a brief as amicus curiae filed.
8	Mar 13 1991		DISTRIBUTED. March 29, 1991
9	Mar 15 1991	X	Reply brief of petitioners Jake Ayers, Jr., et al. (TYPEWRITTEN) filed. VIDED.
12	Apr 8 1991		REDISTRIBUTED. April 12, 1991
14	Apr 15 1991		Motion of NAACP Legal Defense and Educational Fund, Inc. for leave to file a brief as amicus curiae GRANTED.
15	Apr 15 1991		Motion of 17 Afro-American Students who formerly attended University of Mississippi for leave to file a brief as amicus curiae GRANTED.
16	Apr 15 1991		Petition GRANTED. The case is consolidated with No. 90-6588, and a total of one hour is allotted for oral argument.
			**********
18	May 22 1991		Order extending time to file brief of petitioner on the merits until July 1, 1991.
19	May 30 1991	G	Motion of National Bar Association, et al. for leave to file a brief as amici curiae filed.
44	May 30 1991	G	Motion of National Bar Association, et al. for leave to file a brief as amicus curiae filed.
20	Jun 24 1991		Motion of National Bar Association, et al. for leave to file a brief as amici curiae GRANTED.
21	Jun 28 1991	G	Motion of Alcorn State University National Alumni Association (VIDE) for leave to file a brief as amicus curiae filed.

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Entry	Date	Note	Proceedings and Orders
22	Jul 1 1991		Brief amicus curiae of Tennessee filed. VIDED.
23	Jul 1 1991		Brief of petitioner United States filed. VIDED.
25	Jul 1 1991	G	Motion of Joseph Califano Jr., et al. for leave to file a brief as amici curiae filed.
28	Jul 1 1991	G	Motion of NAACP Legal Defense and Educational Fund, et al. for leave to file a brief as amici curiae filed.
24	Jul 3 1991	G	Motion of Jackson State University for leave to file a brief as amicus curiae filed.
26	Jul 8 1991		Lodging received, 9 copies (Box).
27	Jul 9 1991		Joint appendix filed. VIDED.
		*	Joint Appendix is in 5 volumes.
29	Jul 15 1991		Order further extending time to file brief of respondent on the merits until September 6, 1991.
30	Jul 16 1991	G	Motion of the Solicitor General for divided argument filed.
31	Jul 17 1991	D	Motion of petitioners Jake Ayers, Jr., et al. for divided argument and for additional time for oral argument filed.
32	Aug 9 1991	G	Motion of Charles E. "Buddy" Roemer III, Governor of the State of Louisiana, et al. for leave to file a brief as amici curiae filed.
33	Aug 26 1991	G	Application (A91-146) by respondents Ray Maybus, et al. to file a in excess of page limits, submitted to Justice Scalia.
34	Aug 28 1991		Application (A91-146) granted by Justice Scalia, allowing a maximum of 70 pages.
35	Sep 5 1991		SET FOR ARGUMENT WEDNESDAY, NOVEMBER 13, 1991.(1ST CASE)
36	Sep 6 1991		Brief of respondents Ray Mabus, Gov. of MS., et al. filed. VIDED.
42	Sep 6 1991	G	Motion of Board of Trustees of the University of Alabama for leave to file a brief as amicus curiae filed.
37	Sep 13 1991		Motion of Alcorn State University National Alumni Association (VIDE) for leave to file a brief as amicus curiae GRANTED.
38	Sep 13 1991		Motion of Joseph Califano Jr., et al. for leave to file a brief as amici curiae GRANTED.
39	Sep 13 1991		Motion of Jackson State University for leave to file a brief as amicus curiae GRANTED.
40	Sep 13 1991		Motion of the Solicitor General for divided argument GRANTED.
41	Sep 13 1991		Motion of petitioners Jake Ayers, Jr., et al. for divided argument and for additional time for oral argument DENIED.
43	Sep 16 1991		CIRCULATED.
45	Sep 20 1991		Motion of National Bar Association, et al. for leave to file a brief as amicus curiae GRANTED.
46	Sep 20 1991		Motion of NAACP Legal Defense and Educational Fund, et al. for leave to file a brief as amici curiae GRANTED.
47	Oct 7 1991		Motion of Charles E. "Buddy" Roemer III, Governor of the State of Louisiana, et al. for leave to file a brief as amici curiae GRANTED.

No. 90-1205-CFX

Entry	Date	Note	Proceedings and Orders
48	Oct 7 1991		Motion of Board of Trustees of the University of Alabama for leave to file a brief as amicus curiae GRANTED.
49	Oct 7 1991	D	Motion of respondents to strike amici curiae brief of Jackson State University filed.
51	Oct 9 1991	D	Motion of John F. Knight, Jr., et al. for leave to file a brief as amici curiae filed.
52	Oct 10 1991	X	Reply brief of petitioner United States filed. VIDED.
53	Oct 10 1991	X	Reply brief of petitioners Jake Ayers, et al. (TBP) filed.
50	Oct 15 1991		Motion of respondents to strike amici curiae brief of Jackson State University DENIED.
54	Oct 18 1991	D	Application (A91-275) to file a in excess of page limits, submitted to Justice Scalia.
55	Oct 21 1991		Application (A91-275) denied by Justice Scalia.
56	Nov 4 1991		Motion of John F. Knight, Jr., et al. for leave to file a brief as amici curiae DENIED.
57	Nov 12 1991		Record filed.
		*	LODGING by petitioner Ayers. (Abstract article, "Is Higher Education Desegretation a Remedy for Segregation.")
58	Nov 13 1991		ARGUED.

No. 90-1205 (1)

Supreme Court, U.S.
FILED
JAN 28 1991
[illegible] SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

JEFFREY P. MINEAR
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
LINDA F. THOME
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether Mississippi satisfied its obligation to dismantle its racially dual system of higher education, when state action continues to interfere on the basis of race with a qualified student applicant's choice of which school to attend.

PARTIES TO THE PROCEEDING

The petitioner, plaintiff-intervenor in this action, is the United States. The plaintiffs are Mrs. Jake Ayers, Sr., Vernon B. Ayers, William B. Ayers, Hattie James, Margaret James, Leola Blackmon, Lillie Blackmon, Shirley A. Porter, Kenneth Spearman, James T. Holloway, Dave Collins, Lewis E. Armstrong, Darryl C. Thomas, Albert Joe Williams, George Bell, Johnny Sims, Thelma H. Walker, Randolph Walker, Bennie G. Thompson, Virginia Hill, B. Leon Johnson, Pamela Gipson, Janice K. Miggins, and Floyd Alexander; and a plaintiff class consisting of all black citizens residing in Mississippi, whether students, former students, parents, employees, or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by the defendant Board of Trustees. The defendants are Ray Mabus, in his official capacity as Governor of the State of Mississippi;[1] the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi; members of the Board of Trustees, in their personal and official capacities: Cass Pennington, Joe A. Haynes, Dianne Miller, Nancy McGahey Baker, Frank Crosthwait, Jr., Will A. Hickman, J. Marlin Ivey, Bryce Griffis, William M. Jones, James W. Luvene, Sidney L. Rushing, and Dianne Walton; Delta State University, and its president, F. Kent Wyatt, in his official capacity; Mississippi State University, and its president, Donald W. Zacharias, in his official capacity; Mississippi University for

[1] Pursuant to Supreme Court Rule 35.3, the current governor of Mississippi, Ray Mabus, has been substituted for William Allain, governor at the time this case was tried.

Women, and its president, Clyda S. Rent, in her official capacity; the University of Mississippi, and its chancellor, R. Gerald Turner, in his official capacity; the University of Southern Mississippi, and its president, Aubrey K. Lucas, in his official capacity; and W. Ray Cleer, in his official capacity as Commissioner of Higher Education of the State of Mississippi.

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In the Supreme Court of the United States

OCTOBER TERM, 1990

No.

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.[1]

OPINIONS BELOW

The en banc opinion of the court of appeals (App., *infra*, 1a-44a) is reported at 914 F.2d 676. The panel opinion of the court of appeals (App., *infra*, 45a-103a) is reported at 893 F.2d 732. The opinion of the district court (App., *infra*, 104a-201a) is reported at 674 F. Supp. 1523.

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[1] The private plaintiffs in this case filed a petition for a writ of certiorari (No. 90-6588) on December 14, 1990.

JURISDICTION

The judgment of the court of appeals upon rehearing en banc was entered on September 28, 1990. On December 18, 1990, Justice Scalia extended the time in which to file a petition for a writ of certiorari to January 26, 1991 (a Saturday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment and Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, are set forth in the petition appendix (App., *infra*, 202a).

STATEMENT

Prior to this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), the State of Mississippi established a system of higher education based on de jure segregation of white and black students. Mississippi has since adopted what it submits are race-neutral policies and practices. The question in this case is whether Mississippi has satisfied its obligation under the Equal Protection Clause and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, to dismantle its racially dual system of higher education.

1. Mississippi manages and controls eight public universities through the Board of Trustees of State Institutions of Higher Learning, which has plenary authority over the institutions' operations. App., *infra*, 106a, 109a, 114a. At the time of this Court's decision in *Brown* until at least 1962, all eight universities were strictly segregated by race, and public higher education in Mississippi was "both separate

and unequal." App., *infra*, 114a. Five institutions—the University of Mississippi, Mississippi State University, the University of Southern Mississippi, Mississippi University for Women, and Delta State University—admitted only white students. Three institutions—Alcorn State University, Jackson State University, and Mississippi Valley State University—admitted only black students. *Id.* at 109a-115a.

The racially dual system encompassed the areas of "(1) student enrollment, (2) maintenance of branch centers by the historically white universities in close proximity to the historically black universities, (3) employment of faculty and staff, (4) provision and condition of facilities, (5) allocation of financial resources, (6) academic program offerings, and (7) racial composition of the governing board and its staff." App., *infra*, 169a; see also *id.* at 114a-115a. While the white institutions offered "a full range of program offerings" at the undergraduate, graduate, and professional levels, the educational offerings at the black institutions "were limited to teacher education, agriculture and the mechanical arts, and the practical arts and trades." *Id.* at 114a-115a & n.2.

All eight institutions remained segregated, in accordance with state law, until at least 1962, when James Meredith was admitted to the University of Mississippi under court order. App., *infra*, 116a. See *Meredith* v. *Fair*, 306 F. 2d 374 (5th Cir.), cert. denied, 371 U.S. 828, enforced, 313 F.2d 534 (5th Cir. 1962). The other four white institutions did not admit their first black students until between 1965 and 1967. The white institutions began hiring their first black faculty members between 1970 and 1975. The black institutions admitted their first white students between 1966 and 1970, and hired their first white

faculty members between 1966 and 1969. App., *infra*, 116a-117a.

2. The private petitioners, representing black citizens of Mississippi, initiated this action against respondents, the Governor and state educational officials, on January 28, 1975. Their complaint alleged that Mississippi had maintained the racially segregative effects of its historicaiiy dual system of public higher education, thereby violating the Fifth, Ninth, Thirteenth, and Fourteenth Amendments, 42 U.S.C. 1981 and 1983, and Title VI of the Civil Right Act of 1964, 42 U.S.C. 2000d *et seq.* App., *infra*, 105a-106a. Shortly thereafter, the United States intervened pursuant to 42 U.S.C. 2000h-2. The United States alleged that Mississippi's maintenance of the effects of its dual system of higher public education violated the Fourteenth Amendment and Title VI.

In 1987, after extensive discovery and unsuccessful settlement efforts, the district court held a five-week bench trial. On December 10, 1987, the district court ruled for respondents on all issues and dismissed the case. App., *infra*, 108a-109a, 201a. The district court recognized that there remained significant differences between the historically white and historically black schools as to admission standards, student and faculty composition, and funding. See, *e.g.*, App., *infra*, 127a-128a, 133a, 135a-138a, 156a-163a. The district court held, however, that respondents had satisfied their affirmative obligation to dismantle the dual system through the adoption of race-neutral policies and practices. *Id.* at 201a.

The United States and the private petitioners appealed. A divided panel of the Fifth Circuit reversed and remanded the case for remedial proceedings. App., *infra*, 45a-103a. The court of appeals ruled that this Court's decisions in *Brown* and *Green* v.

New Kent County School Board, 391 U.S. 430 (1968), which involved desegregation of compulsory elementary and secondary education systems, require respondents "to eliminate all of the 'vestiges' or effects of de jure segregation, root and branch, in a university setting." *Id.* at 72a. The court concluded that respondents had failed to meet that obligation. *Id.* at 94a. Judge Duhé dissented, relying primarily on Justice White's concurring opinion for the Court in *Bazemore* v. *Friday*, 478 U.S. 385 (1986), which held that state officials had adequately disestablished segregation of state-supported 4-H and Homemaker Clubs by allowing "voluntary choice" in attendance (*id.* at 407-408). App., *infra*, 102a-103a. Judge Duhé reasoned that because university attendance choices are "voluntarily made" (*id.* at 102a), the State's duty "to eliminate all vestiges of de jure discrimination 'root and branch' does not reach the university." *Id.* at 103a.

The court of appeals granted a suggestion for rehearing en banc and vacated the panel opinion. App., *infra*, 2a. On rehearing, a divided en banc court affirmed the district court, concluding that "Mississippi had adopted and implemented race neutral policies for operating its colleges and universities and that all students have real freedom of choice to attend the college or university they wish." *Ibid.*

The en banc court acknowledged that the State was "constitutionally required to eliminate invidious racial distinctions and dismantle its dual system." App., *infra*, 13a. In defining that duty in the higher education context, however, the court concluded that it must choose between the principles set forth in Justice White's concurring opinion for the Court in *Bazemore* and those set forth in *Green*. App., *infra*,

13a-14a, 20a. The en banc majority determined that *Bazemore*, rather than *Green*, provided the standard for desegregation of public universities (App., *infra*, 23a), stating:

> to fulfill its affirmative duty to disestablish its prior system of de jure segregation in higher education, the state of Mississippi satisfies its constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures.

Id. at 26a. The court then concluded that Mississippi had satisfied that standard in this case. See *id.* at 26a-37a.

Judge Goldberg, joined by Judges Politz, King, and Johnson, dissented, endorsing the panel majority's opinion. App., *infra*, 37a-38a. Judge Higginbotham concurred in part and dissented in part. *Id.* at 38a-44a. In his view, the fact that Mississippi "has no constitutional duty to achieve any particular racial mix is not necessarily a full response to the more general question of whether it has discharged its duty to undo its wrong." *Id.* at 40a. He would have affirmed the district court's judgment that Mississippi had not engaged in intentional discrimination, but would have remanded the case for an inquiry into whether "Mississippi has discharged its duty to undo any present injury from the past." *Id.* at 38a n.*, 43a. Judges Politz and King joined in the dissenting portion of Judge Higginbotham's decision.

REASONS FOR GRANTING THE PETITION

The court of appeals' decision in this case raises important issues of national significance and is in direct conflict with decisions of the Sixth Circuit. We accordingly submit that this Court should grant the government's and the private petitioners' petitions for a writ of certiorari.

1. As the opinions below plainly indicate, there is considerable confusion over the proper legal standard against which to assess a State's obligation to disestablish a formerly de jure dual system of higher education. The resolution of that question by the court below will have a direct effect on the operation of Mississippi's eight universities and on the thousands of Mississippi citizens who are attending or wish to attend those institutions. That decision will also establish a binding legal standard for disestablishment of segregated systems of higher education in the other States within the Fifth Circuit.[2] In addition, it may affect ongoing judicial proceedings as to the status of higher education systems in other States.[3] Given the

[2] The United States' complaint in *United States* v. *Louisiana*, No. 80-3300, a similar higher education desegregation case, has been dismissed as a result of the Fifth Circuit's decision in this case. We have filed a notice of appeal from that dismissal and have asked the court of appeals to stay proceedings pending action by this Court on the government's petition.

[3] On October 29, 1990, the United States District Court for the Northern District of Alabama commenced a trial on the liability issues in *United States* v. *Alabama*, Civ. No. 83-M-1676-S (N.D. Ala.), a similar higher education desegregation case. In addition, the Department of Education's Office of Civil Rights is responsible for ensuring Title VI compliance by other States that lie within the jurisdiction of five different federal circuits.

broad impact of the decision below, this Court should grant review to determine the scope of the affirmative duty to desegregate in the higher education context.[4]

2. The Fifth Circuit's ruling in this case is in conflict with the law in the Sixth Circuit, as set forth in *Geier* v. *University of Tennessee*, 597 F.2d 1056, 1065 (1979), and *Geier* v. *Alexander*, 801 F.2d 799, 805 (1986). In the first *Geier* decision, the Sixth Circuit upheld a district court order requiring the merger of a traditionally black and a traditionally white institution located in Nashville as a part of a plan to dismantle Tennessee's dual system of higher education. The court stated that "the *Green* requirement of an affirmative duty applies to public higher education as well as to education at the elementary and secondary school levels * * *; it is only the means of

[4] This Court has not dealt with the issue before, except to affirm summarily two contradictory lower court decisions. Compare *Alabama State Teachers Ass'n* v. *Alabama Public School & College Auth.*, 289 F. Supp. 784 (M.D. Ala. 1968), aff'd per curiam, 393 U.S. 400 (1969) (*ASTA*), with *Norris* v. *State Council of Higher Educ.*, 327 F. Supp. 1368 (E.D. Va.), aff'd, 404 U.S. 907 (1971). In *ASTA*, the district court held that the scope of the affirmative duty to dismantle a dual system of higher education did not extend as far as in the elementary and secondary school context (289 F. Supp. at 787) and that, on the facts of that case, good faith, nondiscriminatory practices had satisfied the affirmative duty (*id.* at 789-790). *Norris*, on the other hand, rejected the contention that the duty defined in *ASTA* provided a "universal definition" of the scope of the duty for higher education systems (327 F. Supp. at 1372) and specifically held that higher education authorities were obligated "to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch" (*id.* at 1373, quoting *Green*). *Norris* held the duty to be "as exacting" as in the elementary and secondary context, even though the methods used to achieve the desired end must necessarily differ. *Ibid.*

eliminating segregation which differ." 597 F.2d at 1065.[5] In the second *Geier* decision, the Sixth Circuit reaffirmed that conclusion, upholding a set-aside program that gave black students preferences for admission to graduate and professional schools. 801 F.2d at 804-805.[6] The en banc majority in this case expressly disagreed "with both the holding and reasoning in *Geier*." 914 F.2d at 686.

3. We believe that the court of appeals failed to reconcile properly the principles set forth in Justice White's concurring opinion for the Court in *Bazemore* and the principles set forth in other opinions of this Court, including *Green*, that address a State's obligation to dismantle segregated systems of primary and secondary public education. The issue below was joined entirely in terms of the need to apply either the *Bazemore* or the *Green* standard. In our view,

[5] The defendants in *Geier* took a position similar to that adopted by the en banc majority in this case, arguing "that the State fulfilled its constitutional obligation to establish a unitary system when it instituted an 'open-door' admissions policy" and that "the present predominantly black enrollment at TSU ha[d] resulted from the exercise of free choice by students rather than from any current unconstitutional actions of the State." 597 F.2d at 1064. The Sixth Circuit rejected that argument, stating that "[w]here an open admissions policy neither produces the required result of desegregation nor promises realistically to do so, something further is required." *Id.* at 1067.

[6] The Sixth Circuit rejected an argument, based on this Court's decision in *Bazemore*, that the program was not justified because the defendants' obligation to dismantle the former dual system had been satisfied by the adoption of "neutral admissions standards." 801 F.2d at 804. The court of appeals distinguished *Bazemore*, on the ground that higher education was of much greater importance than membership in 4-H clubs, and restated its holding from the first *Geier* decision. *Id.* at 804-805.

however, those two approaches are by no means mutually exclusive in the context of higher education; rather, both approaches can properly inform resolution of the ultimate question—whether state action interferes on the basis of race with a qualified student applicant's choice of which state school to attend. Here, the actions of Mississippi taken after abolition of its de jure dual system—in particular, continuation of a racially-biased admissions process and perpetuation of the dual system through program duplication at the historically black and historically white schools—substantially interfered with and thus impermissibly fettered that choice. As a result, the court below erred in concluding that the State had fulfilled its constitutional and statutory obligations to treat all individuals without regard to race. Because the proper articulation of those obligations is an important issue that has divided the circuits, this Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

JEFFREY P. MINEAR
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
LINDA F. THOME
Attorneys

JANUARY 1991

APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 88-4103

JAKE AYERS, SR., ET AL., PLAINTIFFS,

JAKE AYERS, JR., BENNIE G. THOMPSON, LEOLA BLACKMON, LILLIE BLACKMON, LOUIS ARMSTRONG, DARRYL C. THOMAS, AND LEON JOHNSON, PLAINTIFFS-APPELLANTS,

and

UNITED STATES OF AMERICA,
INTERVENOR-APPELLANT,

v.

WILLIAM ALLAIN, GOVERNOR, STATE OF MISSISSIPPI, ET AL., DEFENDANTS-APPELLEES.

Sept. 28, 1990

Appeals from the United States District Court
for the Northern District of Mississippi

Before GOLDBERG, GEE, POLITZ, KING, JOHNSON, GARWOOD, JOLLY, HIGGINBOTHAM, DAVIS, JONES, SMITH, DUHÉ, WEINER and BARKSDALE, Circuit Judges.[1]

DUHÉ, Circuit Judge:

This is an appeal from the dismissal of a lawsuit challenging the racial identity of institutions of public higher education in the State of Mississippi. *Ayers v. Allain*, 674 F.Supp. 1523 (N.D.Miss.1987) (*Ayers I*). A panel of this Court reversed and remanded, *Ayers v. Allain*, 893 F.2d 732 (5th Cir.1990) (*Ayers II*), and rehearing en banc was granted, *Ayers v. Allain*, 898 F.2d 1014 (5th Cir.1990). Finding that the record makes clear that Mississippi has adopted and implemented race neutral policies for operating its colleges and universities and that all students have real freedom of choice to attend the college or university they wish, we affirm.

A. *History*

A detailed outline of the prior history of this case may be found in the opinions of the district court and the panel majority.[2] This is a class action filed in 1975 by black citizens of Mississippi against the Governor of Mississippi, the Board of Trustees of State Institutions of Higher Learning and its members, five

[1] Chief Judge Clark is recused.

When this case was orally argued before and considered by the court, Judge Reavley was in active service. He participated in both the oral argument and the en banc conference. He took senior status, however, on August 1, 1990.

[2] *Ayers I*, 674 F.Supp. at 1524-26, 1528-30; *Ayers II*, 893 F.2d at 733, 743-44.

historically white institutions of higher learning and their chief administrative officers, the State Department of Education, and the State Superintendent of Education.[3] The plaintiffs alleged that the defendants were maintaining and perpetuating a racially dual system of higher education in violation of the Fifth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1981, 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* The United States intervened as plaintiff under 42 U.S.C. § 2000h-2 and alleged violations of the Fourteenth Amendment and Title VI. The plaintiffs sought injunctive relief requiring the defendants to conform Mississippi's system of higher education to the constitutional and statutory mandates. The lawsuit remained under the supervision of a three-judge court for ten years and was transferred to the district court for the Northern District of Mississippi in 1985.

The district judge ordered the case tried to the court. The plaintiffs directed their complaint to the following components of higher education in Mississippi: student admissions standards and enrollment, university staff composition, institutional mission, provision and maintenance of facilities, allocation of financial resources, curricular offerings and placement of programs, operation of branch programs, al-

[3] The plaintiff class was certified in 1975 as:

[a]ll black citizens residing in Mississippi, whether students, former students, parents, employees, or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by said Board of Trustees.

Ayers I, 674 F.Supp. at 1526.

location of land grant functions, and the composition of the Board of Trustees and its staff. The plaintiffs alleged that the vestiges of a dual, racially discriminatory system of higher education persisted in each of the components. They identified the institutions of higher learning in Mississippi as either historically black institutions or historically white institutions[4] as follows:

Historically Black Institutions
Alcorn State University
Jackson State University
Mississippi Valley State University

Historically White Institutions
Delta State University
Mississippi State University
Mississippi University for Women
University of Mississippi
University of Southern Mississippi

The defendants alleged that the Board and each institution maintained good-faith, nondiscriminatory and nonracial admissions and operational policies with respect to students, faculty, and staff, and that the state's duty to disestablish state-imposed segregation extended no further. The defendants also alleged that any racial identifiability of the institutions could not be attributed to state policies.

The district judge conducted a five-week trial and issued detailed and well reasoned findings of fact and conclusions of law. *Ayers I*, 674 F.Supp. at 1526-63.

[4] At the time the Supreme Court rendered its decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), these institutions were designated for the education of black or white citizens, respectively.

He stated that the law clearly imposed upon Mississippi an affirmative duty to dismantle its racially dual system of education, but that the scope of the duty was not so broad in the context of higher education as in primary and secondary education. He held that Mississippi was not required to achieve a certain level of racial balance in the various components of higher education, but rather was only obliged to adopt and implement good-faith, race-neutral policies and procedures. He relied upon the reasoning of *Alabama State Teachers Ass'n v. Alabama Public School and College Auth.*, 289 F.Supp. 784 (M.D.Ala.1968) (three-judge court), *aff'd*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969) and *Bazemore v. Friday*, 478 U.S. 385, 407-09, 106 S.Ct. 3000, 3012-13, 92 L.Ed.2d 315 (1986) (White, J., concurring), in which rules governing primary and secondary education were distinguished on the basis of a state's inability to designate college attendance zones and the broader choices available to students in the context of higher education. *Ayers I*, 674 F.Supp. at 1551-54. The judge's findings and conclusions accorded with this construction of the law, and the plaintiffs have challenged some of those findings and conclusions on appeal. A summary of the district court's challenged findings and conclusions follows:

The Board of Trustees. The Board of Trustees is charged with the management and control of the institutions of higher learning in Mississippi and consists of thirteen members appointed by the governor. No black was appointed to the Board until 1972, but since 1972 three additional blacks have been appointed and three blacks currently serve. With respect to the Board staff, of the twenty-three persons responsible for overseeing the day-to-day operations of the

Board, six are black, and of the fifty staff members responsible for overseeing the guaranteed student loan program, seventeen are black. The district court concluded that the Board had adopted racially neutral hiring policies with respect to its staff. *Id.* at 1550, 1563.

Use of ACT scores in student admissions. Shortly after James H. Merideth applied for admission to the University of Mississippi, the Board adopted certain policies to govern admissions to institutions of higher education in Mississippi.[5] Among these policies was the requirement that all students applying for admission take a test prepared by the American College Testing Program (ACT). The ACT requirement continues to this day. In the mid-1970's the historically black institutions did not require a minimum ACT score for admission, while the historically white schools generally required a minimum score of 15 but also provided qualified admission of students with lower scores. In the latter half of the 1970's the Board sought to address concerns about the underpreparation of incoming students, and beginning in 1977 the Board instituted a new policy declining the admission of any student who did not achieve an ACT score of 9. The Board did not adopt high school grades as an admissions component. During subsequent years the Board granted permission to certain historically white institutions to admit on a probationary or exceptional basis students with scores of less than 15. The Board also granted permission to certain historically black institutions to raise the minimum ACT score while preserving the right to admit on an exceptional basis students who fell be-

[5] *See Meredeth v. Fair*, 305 F.2d 343, 353 (5th Cir. 1962).

low the minimum. *Id.* at 1530-34. The current admissions practices are:

(1) All incoming students are required to take the secondary school "core curriculum". In grades 9 through 12 students are required to have earned a certain number of units in English, mathematics, science, social science, and an elective course. A particular grade point average is not required. Exemptions from the core curriculum requirement are possible, and the exemption policies are more liberal for admission to the historically black institutions.

(2) All Mississippi applicants under 21 are required to take the ACT, and no student who scores below 9 is eligible for admission as a first-time freshman.[6] Within these guidelines the individual institutions maintain different admissions standards. The Board requires a minimum score of 15 for automatic admission to the historically white institutions, although it permits enrollment of up to fifty talented or high-risk students (students presenting a high risk of academic failure) per year per institution with scores below 15. Automatic admission to Mississippi University for Women requires a score of 18, although students with lower scores can be admitted either on an exceptional basis or by achieving a certain grade point average. Automatic admission to Jackson State University, Alcorn State University, and Mississippi Valley State University requires a score of 13, with enrollment permitted for students with lower scores who, for example, are identified as high-risk or talented or who achieve a certain grade point average.

[6] The judge found that students who receive a score of 9 on the English and social studies tests are reading at a ninth-grade level.

On average the ACT scores of Mississippi black students are lower than those of Mississippi white students. However, according to the Deputy Superintendent of Education, ACT scores rise measurably as more students choose to take the core curriculum and a smaller percentage of blacks choose to take that curriculum. Very few black applicants, if any, are denied admission to Mississippi universities as first-time freshman for failure to achieve the minimum ACT score. *Id.* at 1535-36.

(3) Mississippi has numerous public junior colleges which permit automatic enrollment to high school graduates. Students who fail to achieve either the required ACT score or who have not satisfied the core curiculum requirement are permitted to transfer from the iunior colleges to the public universities after the completion of 24 hours with a C average. Some students with low ACT scores are permitted to transfer with as few as 15 hours. Because of the transfer policy, no applicant is denied admission for failure to achieve a particular ACT score, but admission at most is deferred.

The trial judge concluded that the current admissions policies and procedures, including the use of the ACT, were not adopted for a racially discriminatory purpose and are reasonable, educationally sound, and racially neutral. Nearly all black students who applied to historically white universities in the fall of 1986 were accepted. However, the ACT requirement was initially adopted because of its adverse effects on blacks, but admissions policies have changed in the ensuing 25 years. In particular, he concluded that the minimum ACT score of 9 was not adopted in 1976 for discriminatory purposes, but in order to address the problem of underpreparation of incoming

freshman. In addition, the district court found adequate justification for the Board's decision not to adopt high school grades as a component of the admissions requirements; grade inflation and the lack of comparability among Mississippi's high schools justified the Board's policy. *Id.* at 1554-57.

Off-campus centers. The plaintiffs alleged that three off-campus centers competed for students with certain historically black institutions:

(1) In 1966 three extension centers were consolidated to form the Mississippi University Center, located in Jackson near Jackson State University. In 1972 the Board assigned management responsibilities to the University of Mississippi, Mississippi State University, and Jackson State University, and gave the center degree-granting status.

(2) In 1962 the Board granted the University of Southern Mississippi permission to establish a resident center in Natchez, near Alcorn State University. The Plan of Compliance adopted by the Board in 1974 [7] called for the joint participation of the two universities at the Natchez Center, and presently the University of Southern Mississippi offers only noncredit extension courses at the center.

(3) In 1952 the Board recognized a resident center at Vicksburg, and in 1980 approved a consortium arrangement between Alcorn State University and Mississippi State University for activities at the center. *Id.* at 1541-43.

Institutional mission. In 1981 the Board issued a document entitled "Mission Statements." Under the

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[7] *See Ayers I*, 674 F.Supp. at 1530; *Ayers II*, 893 F.2d at 737-38.

statements the public universities were classified as either "comprehensive," "urban," or "regional."

Comprehensive

Mississippi State University
University of Mississippi
University of Southern Mississippi

Regional

Alcorn State University
Delta State University
Mississippi University for Women
Mississippi Valley State University

Urban

Jackson State University

The "comprehensive" designation implies a greater number and higher level of degree offerings, the "urban" designation oriented the institution toward service to the urban community, and "regional" signifies course offerings generally limited to undergraduate instruction. One witness testified that every state but one assigns missions to its universities. Such assignments are required by limited financial resources. *Id.* at 1538-40.

The judge concluded that the 1981 mission designations were not motivated by a discriminatory purpose but rather a need to conserve scarce educational resources. The state was under no duty to use the designations as a device to maximize racial integration. The designations were rationally based on sound educational policies. *Id.* at 1560-61.

Disparities in funding and programs. Differences exist among the institutions with respect to the relative quality and quantity of programs offered, library volumes, and number of faculty with doctorates and degrees from major research institutions. However,

these differences do not correlate with historical racial configuration, but rather with the comprehensive or noncomprehensive designation of a given institution. In particular, no racial pattern exists in program quality among noncomprehensive institutions. *Id.* at 1541.

The plaintiffs alleged that disparities existed in land grant activities between Mississippi's two land grant universities, Alcorn State University and Mississippi State University. Financial allocation for agricultural instruction at the two universities are educationally sound, reasonable, and unaffected by racial considerations. Agricultural research is heavily concentrated at Mississippi State University, which conducts research through the Mississippi Agricultural and Forestry Experimental Station. Since 1972, however, Alcorn State University has conducted a branch experimental station and since 1971 has received limited legislative appropriations for agricultural research. The judge also found that the Mississippi Cooperative Extension Service, an off-campus, separately funded arm of Mississippi State University, operates a branch at Alcorn State University. He concluded that funds for land grant instruction were allocated according to a racially neutral funding formula, and that disparities in land grant programs were not caused by any discriminatory motive. *Id.* at 1543-46.

With respect to funding, the Board allocates a general support appropriation among the universities according to a funding formula. The formula attempts to calculate costs of instruction, the percentage of total need which the costs of instruction represent, and the funds each institution is expected to generate for itself. Institutional mission is an important element in calculating instruction costs, total need, and

expected self-generated funds.[8] The funding formula does not treat the predominantly black institutions inequitably. Mississippi Valley State University benefitted substantially from being grouped with the other regional universities for purposes of calculating instruction costs, and Jackson State University also benefitted from bing grouped with the University of Southern Mississippi. On those occasions when the Board departed from the formula, the predominantly black institutions have benefitted. The district court concluded that differences in funding levels are not attributable to race but to legitimate educational distinctions among the institutions. *Id.* at 1546-48, 1562.

With respect to facilities, from 1970 to 1986 the predominantly black institutions received a greater percentage share of appropriations for new construction than the percentage of system-wide enrollment those institutions represented. In comparing the amount of functional space available per full-time equivalent student,[9] the predominantly black schools rank second, third, and seventh among the eight uni-

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[8] Average cost estimates are based on an aggregation of the institutions into three groups. These groups correspond to the mission designation of the respective universities, except that the University of Southern Mississippi is included with Jackson State University for purposes of establishing an average for the urban group.

[9] Dr. Larry Leslie, Professor and Director of Higher Education at the University of Arizona, testified that the calculation "per full-time equivalent student" was generally performed by adding one-third of the part-time enrollment to the number of students classified as full time. The calculation may also be performed by adding the full-time enrollment to an aggregate of credit hours earned by part-time students divided by the appropriate dividend to reflect full-time equivalence.

versities. The district court found no correlation between the racial identity of the institutions and the quality of the facilities, and concluded that the distribution of funds for capital improvements clearly evinced a good-faith affirmative effort to provide adequate facilities at the historically black institutions. *Id.* at 1548-50, 1562.

B. *The Duty of the State*

It is necessary first to determine the scope of Mississippi's duty to remedy the effects of past de jure discrimination. There is no dispute that, when the Supreme Court decided *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (*Brown I*), Mississippi operated a racially dual system of public higher education. *See Meredith v. Fair*, 305 F.2d 343, 350 n. 7 (5th Cir.1962); *Ayers I*, 674 F.Supp. at 1528-30. Mississippi was therefore constitutionally required to eliminate invidious racial distinctions and dismantle its dual system. *Swann v. Charlotte-Mechlenburg Board of Education*, 402 U.S. 1, 18, 22, 91 S.Ct. 1267, 1277, 1279, 28 L.Ed.2d 554 (1971); *Brown v. Board of Education*, 349 U.S. 294, 300-01, 75 S.Ct. 753, 756-57, 99 L.Ed. 294 (1955) (*Brown II*). The precise constitutional obligation of a state with respect to its system of higher education, however, is not so clearly defined as in cases involving primary and secondary education. In the latter cases school authorities have been charged to eliminate all vestiges of state-imposed segregation. *Milliken v. Bradley*, 433 U.S. 267, 289-90, 97 S.Ct. 2749, 2761-62, 53 L.Ed.2d 745 (1977); *Swann*, 402 U.S. at 15, 91 S.Ct. at 1275-76, and "to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and

branch." *Green v. County School Bd.*, 391 U.S. 430, 437-38, 88 S.Ct. 1689, 1694, 20 L.Ed.2d 716 (1968). In two cases outside the context of primary and secondary education, a different standard has been employed. *See Bazemore v. Friday*, 478 U.S. 385, 408, 106 S.Ct. 3000, 3012-13, 92 L.Ed.2d 315 (1986) (White, J., concurring);[10] *Alabama State Teacher Ass'n v. Alabama Public School and College Auth.*, 289 F.Supp. 784 (M.D.Ala.1968), *aff'd per curiam*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969). In these cases the governing authorities were deemed to have satisfied their constitutional obligation by discontinuing prior discriminatory practices and adopting and implementaing good-faith, race-neutral policies. *Bazemore*, 478 U.S. at 408, 106 S.Ct. at 3012-13; *Alabama State Teachers*, 289 F.Supp. at 789-90. This Court must therefore determine whether Mississippi's duty to dismantle its prior system of de jure segregation in higher education requires more than the adoption and implementation of good-faith, race-neutral policies and procedures in the components of higher education under review.

We first note that the issues in this lawsuit bear on the defendants' fulfillment of their duty under the Constitution and relevant laws. Neither this Court nor the district court addresses the specific remedies which the defendants must or might undertake in the future. Nevertheless, because the duty outlined in *Bazemore* is essentially a remedial duty and describes, in a general manner, the scope of mandatory remedial action, it is occasionally necessary to refer to specific remedies for the sake of illustration.

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[10] Justice White's concurring opinion was incorportaed into the *per curiam* opinion of the Court. *See Bazemore*, 478 U.S. at 387, 106 S.Ct. at 3002.

In *Green* the Supreme Court expressed its distrust of ostensibly race-neutral policies in primary and secondary school desegregation plans. The Court determined that a school board's adoption of a plan under which students were annually permitted to choose to attend one of the two schools in the county "fail[ed] to provide meaningful assurance of prompt and effective disestablishment of a dual system. . . ." *Green*, 391 U.S. at 438, 88 S.Ct. at 1694. The Court noted that in the three years prior to its decision no white child had chosen to attend the all-black school and that 85% of the black children continued to attend that school. The Court concluded:

> We do not hold that "freedom of choice" can have no place in [a desegregation plan]. * * * Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself. * * * Although the general experience under "freedom of choice" to date has been such as to indicate its ineffectiveness as a tool of desegregation, there may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual system to a unitary, nonracial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, "freedom of choice" must be held unacceptable.

Id. at 440-41, 88 S.Ct. at 1695-96 (footnotes omitted). The Court therefore dismissed the "freedom of choice"

plan before it as ineffective while recognizing that in other circumstances choice could serve as an effective device, particularly when other methods of achieving desegregation are not available.

The role of choice in higher education under current law can be discovered only somewhat more obliquely from the few cases that have addressed the issue. In *Alabama State Teachers* a black teachers' association sued a state body that governed public education in Alabama, seeking to enjoin the construction of a four-year college at Montgomery. The plaintiffs argued that in planning the new college the defendant did not "maximize desegregation." The court held that although a state has an affirmative duty to dismantle a racially dual system of higher education, the scope of the duty did not extend so far in higher education as in primary and secondary education. The court believed the state's duty was satisfied by dealing with admissions, faculty, and staff in good faith. 289 F.Supp. at 789-90.

> Higher education is neither free nor compulsory. Students choose which, if any, institution they will attend. In making that choice they face the full range of diversity in goals, facilities, equipment, course offerings, teacher training and salaries, and living arrangements, perhaps only to mention a few. From where legislators sit, of course, the system must be viewed on a statewide basis. In deciding to open a new institution or build a branch or expand an existing institution, and in deciding where to locate it, the legislature must consider a very complicated pattern of demand for and availability of the above-listed variables, including, also, impact on the dual system. We conclude that in reviewing such a decision to determine whether it maximized desegregation we would necessarily be involved, consciously or by default, in a wide range of educational policy decisions in which courts should not become involved.

Id. at 788. The court recognized that *Green* had cast doubt on the viability of "freedom of choice" plans in primary and secondary schools. The court believed, however, that *Green* did not dictate the same result for higher education, because freedom to choose a college, unlike freedom to choose a primary or secondary school, helps to perform the important function of fitting a student to the right school. *Id.* at 790.

A few years later another three-judge court reached the opposite result. *Norris v. State Council of Higher Education for Virginia*, 327 F.Supp. 1368 (E.D.Va.), *aff'd*, 404 U.S. 907, 92 S.Ct. 227, 30 L.Ed.2d 180 (1971). Black faculty and students at Virginia State College sought to enjoin the expansion of a predominantly white college from a two-year to a four-year institution. The lawsuit challenged the constitutionality of an appropriation act providing for the expansion, an act which it was alleged perpetuated a racially dual system of higher education. The court concluded that the purpose and effect of the expansion was to provide a four-year college for white students, that the appropriation act served to perpetuate a racially dual system of higher education, and that the act therefore violated the Fourteenth Amendment. *Id.* at 1370-71. The court noted that while *Green* addressed desegregation in public primary and secondary schools, "it defined a constitutional duty owed as well to college students." *Id.* at 1373. The court believed only the means of eliminating discrimination in the two contexts differed. *Id.*

Alabama State Teachers and *Norris* announced opposite conclusions on the issue of *Green*'s applicability to higher education, and both decisions were affirmed on appeal to the Supreme Court. The awkwardness is explained by the underlying facts and conclusions in the two opinions. The disposition in *Alabama State Teachers* is entirely dependent on the conclusion that *Green*'s rejection of certain "freedom of choice" plans in primary and secondary schools does not dictate the same result in the college setting. It is therefore doubtful the Supreme Court could have upheld the denial of the injunction without giving sanction to the standard announced by the trial court. This is particularly so in view of the fact that the Supreme Court had the benefit of Justice Douglas' dissent, in which he points out squarely that the trial court had drawn a distinction between levels of education which had not been drawn in prior decisions. *Alabama State Teachers Ass'n v. Alabama Public School and College Auth.*, 393 U.S. 400, 401, 89 S.Ct. 681, 682, 21 L.Ed.2d 631 (1969) (Douglas, J., dissenting); *see Norris*, 327 F.Supp. at 1378 n. 8 (Hoffman, J., dissenting in part). In *Norris*, on the other hand, the granting of the injunction was based on a finding which warranted the injunction regardless of the standard employed. The lower court found that "the *purpose* and effect of [the college's] escalation is to provide a four-year college for white students who reside nearby." *Norris*, 327 F.Supp. at 1371. This finding put the defendants in clear violation of their duty to eliminate invidious racial distinctions. The decision was therefore properly affirmed on appeal, and the lower court's attempts to distinguish *Alabama State Teachers* and adopt *Green* were in no way essential to the resolution of the case.

In *Bazemore* the Supreme Court further clarified the duty of a state outside the context of primary and secondary education. The School of Agriculture and Life Sciences at North Carolina State University operated an extension service that educated farmers in agriculture, organized and operated clubs in home economics and 4-H, and conducted citizens' organizations for community resource development. The extension service had formerly maintained racially segregated branches, but the branches were merged in 1965. Employees, services recipients, club members, and parents sued the president and other officials of the university alleging racial discrimination in employment and services related to the extension service. The record indicated generally that the 4-H and homemaker clubs remained clearly racially identifiable. The district court nevertheless found no evidence of any discrimination after the merger of the two branches and the opening of the clubs to all eligible persons regardless of race, and the adoption of race neutral policies regarding staff.

The Supreme Court held that the case presented no current violation of the Fourteenth Amendment, because the extension service had discontinued its prior discriminatory practices and had adopted a wholly neutral admissions policy. *Bazemore*, 478 U.S. at 408, 106 S.Ct. at 3012-13. The Court gave particular attention to the choices available to those who sought to join the clubs, noting that the choice of a club was entirely voluntary, a person was not compelled to join a club, and no one had the authority to deny a person the right to join a club he or she wished to join. *Id.* The Court noted that while *Green* required greater measures in desegregating primary and secondary schools, it did not govern the voluntary asso-

ciations operated by the extension service. "[H]owever sound *Green* may have been in the context of the public schools, it has no application to this wholly different milieu." *Id.*

It might appear that *Bazemore* is at odds with *Green*, because *Bazemore* approved a desegregation plan substantially similar to the plan rejected in *Green*. The two decisions do not support such exclusive readings, however. *Green* did not invalidate all "freedom of choice" plans, but rather concluded that such a plan alone in the case before the Court did not effectively meet the state's obligation to desegregate its primary and secondary schools. The Court repeatedly emphasized that there was no universal answer, no one plan, that would achieve the goal of desegregation in every case, and that the availability of alternative methods would bear on the effectiveness of a given plan. "[I]n desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself. . . . '[I]t is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end.'" *Green*, 391 U.S. at 440, 88 S.Ct. at 1695 (quoting *Bowman v. County School Board*, 382 F.2d 326, 333 (4th Cir.1967) (Sobeloff, J., concurring)). *Bazemore* is therefore not at odds with *Green*. *Bazemore* simply provides an instance, anticipated by *Green*, of freedom of choice proving itself in operation.

While the two decisions are not at odds, a court presented with a freedom-of-choice plan must nevertheless determine whether the plan must be rejected under *Green* or may be approved under *Bazemore*.

A decision of the Sixth Circuit illustrates the difficulty in drawing the line. *See Geier v. Alexander*, 801 F.2d 799 (6th Cir. 1986). Tennessee had formerly maintained a racially segregated university system, and several individuals sued the state to prevent the construction of a non-degree granting center close to a predominantly black university. The scope of the lawsuit expanded to include desegregation of the public universities generally, and after many years of litigation the parties agreed to a consent decree. The United States objected to a provision of the decree which required the defendants to select 75 black students yearly for entry into professional programs. The United States argued, among other things, that the provision violated the equal protection rights of non-minority students, because under *Bazemore* a state has no obligation to remove the vestiges of prior discrimination in higher education but need only establish neutral admissions standards.

The Sixth Circuit held that the district court was entitled to impose affirmative remedies to remove the vestiges of prior discrimination and that the provision at issue contained a permissible remedy. The court believed that *Green*, not *Bazemore*, governed the issue of desegregation in public universities, and that the United States had "read[] too much into *Bazemore*." The court stated that while no one is compelled to enter a profession, if he wishes to do so he must pursue the appropriate course of study at a university. The court also stated that an advanced education is more valuable than the services provided by the 4-H and homemaker clubs under review in *Bazemore*, and that the state's interest in educating its young people therefore required the application of *Green*. *Id.* at 804-05.

We disagree with both the holding and reasoning in *Geier*. The *Geier* court applied the *Green* standard after distinguishing *Bazemore*, a case which in turn had distinguished *Green*. We believe the Sixth Circuit incorrectly performed this awkward legal arithmetic. *Bazemore* relies entirely on the choices available to persons who wished to join the clubs under review. The *Bazemore* opinion does not address the character of the programs or the importance of the clubs to the communities they serve, nor does it make any distinction between supplementary education and the conferral of degrees. It states only that the choices available to potential club members serve to distinguish the clubs from primary and secondary schools. It therefore makes little sense why other factors, which formed no part of the reasoning, should serve to distinguish the decision and consequently require a university to submit to the *Green* standard.

If *Bazemore* had not relied on choice alone it would nevertheless be difficult to make the kind of distinctions that the *Geier* court made among the different offerings of a public university. If the law demanded a different obligation of the state with respect to different university offerings, a university could never be judged as a whole. One portion of a given lawsuit directed at "*Bazemore*-type" programs would be resolved by different standards and call for different remedies than another portion directed at "*Green*-type" programs. Distinctions would be made between and among continuing education, professional curricula, research fellowships, athletics, and the like. Such distinctions would be based on the doubtful premise that a state has a different constitutional obligation with respect to separate university offerings.

It would be even more difficult to determine on what bases these different obligations could be allotted, and in this regard *Geier* is particularly unsatisfactory. The notion that a person must pursue the appropriate course of university study in order to enter a profession does not mean that a person has no choice but to enter a university, and does not equate an aspiring professional to a student at a primary or secondary school. The comparison to primary and secondary schools is valid only if the state somehow has a compelling interest in assuring that persons enter professions. The court's statement that membership in an extension service is valuable but cannot be compared to the importance of education ignores the fact that the 4-H and home economics divisions of the extension service in *Bazemore* were engaged in the education of their club members. *See Bazemore*, 478 U.S. at 389, 106 S.Ct. at 3003 (Brennan, J., concurring), 410 (Brennan, J., dissenting in part). The root problem with the *Geier* court's reasoning was correctly identified by the panel majority in the present case as an improper "hierarchy of values." *Ayers II*, 893 F.2d at 745. Such a hierarchy is purely subjective, impossible to apply, and not founded on the Constitution.

We believe that *Bazemore* and *Alabama State Teachers* provide the proper standard to govern Mississippi's efforts to disestablish prior de jure segregation in its universities. Universities are not simply institutions for advanced education. They differ in character fundamentally from primary and secondary schools, and the duty outlined in *Green* cannot bring about the disestablishment of prior de jure segregation in higher education except at the expense of the very goals *Green* sought to achieve. The most

obvious differences concern attendance and the choice of institution. An entire range of remedial options available for the desegregation of the public primary and secondary schools is not available in the context of higher education simply because attendance at a university is voluntary and persons may choose which of several universities to attend. This is not merely a problem of discovering the appropriate "means" of eliminating discrimination as the *Norris* court stated. *Norris*, 327 F.Supp. at 1373. *Green* acknowledged that the viability of a "freedom of choice" plan would be dependent in part on the number of effective remedial alternatives. *Green*, 391 U.S. at 439-41, 88 S.Ct. at 1694-96. The Court twice mentions zoning as such an alternative. *Id.* at 441, 442, 88 S.Ct. at 1696. It hardly needs mention that remedies common to public school desegregation, such as pupil assignments, busing, attendance quotas, and zoning, are unavailable when persons may freely choose whether to pursue an advanced education and, when the choice is made, which of several universities to attend.

A second difference concerns the uniformity of primary and secondary education as contrasted with the diversity of a university education. *See Alabama State Teachers*, 289 F.Supp. at 788. The idea of diversity is crucial to the task of assigning the proper duty to the state of Mississippi, because diversity raises questions of choice discussed in both *Green* and *Bazemore*. The central difficulty is that *Green* would impose a regime of imperatives and uniformity on what are in essence diverse institutions, and in so doing would destroy the choices available to both black and white citizens of Mississippi. For example, consistent with *Green* the plaintiffs have asked for the merger of branch centers with nearby historically

black universities, enhancement of programs at historically black universities to bring them to parity with programs at historically white universities, redesignation of the missions of the historically black universities, and the termination of certain programs so that those programs will be offered only at the historically black universities. To the extent these remedies attempt to force a potential student to attend a particular university, they reduce that student's choice among institutions. To the extent these remedies impose uniformity among the eight institutions, they render the student's choice valueless and return to the unacceptable "separate but equal" principle. The district court found that approximately 30% of all black college students attending four-year colleges in the state attend one of the comprehensive universities. *Ayers I*, 674 F.Supp. at 1562. Imposing remedies argued for by plaintiffs under *Green* would force some of those students, who presently enjoy the benefits of a comprehensive university, either to look to another institution or forgo their education. Equal protection is not served by closing doors which this country and this circuit in particular have taken great pains to open. If an aspiring student may freely choose to attend college, if he may freely choose among all institutions in the state, and if no authority exists to deny him the right to attend the institution of his choice, he is done a severe disservice by remedies which, in seeking to maximize integration, minimize diversity and vitiate his choices. *Bazemore* properly takes account of the "wholly different milieu" of a voluntary association. *Bazemore*, 478 U.S. at 408, 106 S.Ct. at 3013. Under *Bazemore* latter-day Merideths are not routed to what the government deems the appropriate institution, but may

attend any institution they wish. Under *Green* as contended for by plaintiffs they may attend only the institutions that a federal judge has meticulously selected, grafted and pruned for them.

We therefore hold that to fulfill its affirmative duty to disestablish its prior system of de jure segregation in higher education, the state of Mississippi satisfies its constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures.[11]

C. *The District Court Judgment*

The district court concluded that the State of Mississippi had met its affirmative duty to disestablish its former de jure segregated system of higher education. Underlying this conclusion are the numerous findings outlined above regarding Mississippi's adoption of good-faith, race-neutral policies and procedures in the several components of higher education

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[11] The plaintiffs argue that the defendants are required to comply with certain regulations issued by the Office of Civil Rights of the Department of Education. *See* 34 C.F.R. § 100.3 (b) (6) (i) (1989). The regulations generally require a recipient of Title VI assistance who has previously discriminated against persons on the ground of race to take affirmative action to overcome the effects of prior discrimination. Under the present record we are not prepared to say the defendants have failed to meet the duties outlined in the regulations. It is unnecessary, however, to discuss the scope of Mississippi's duty under the regulations. The plaintiffs in *Bazemore* challenged the extension service's goverance of the 4-H and homemaker clubs under Title VI. *See Bazemore v. Friday*, 751 F.2d 662, 687 n. 128 (4th Cir. 1984). There cannot be any question, therefore, that the duty outlined by the Supreme Court in *Bazemore* controls in Title VI cases.

under review. The district court properly treated Mississippi's current practices as matters of fact. *Pullman-Standard v. Swint*, 456 U.S. 273, 288-90, 102 S.Ct. 1781, 1789-91, 72 L.Ed.2d 66 (1982); *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 534 & n. 8, 99 S.Ct. 2971, 2977 & n. 8, 61 L.Ed.2d 720 (1979). We therefore review those findings for clear error. Fed.R.Civ.P. 52(a); *Pullman-Standard*, 456 U.S. at 290, 102 S.Ct. at 1791.

The plaintiffs argue that the district court should have assessed the defendants' practices under *Green*, and the plaintiffs' allegations of clear error rest in large part on the contention that the court applied the incorrect remedial duty. Consequently, with respect to many of the court's findings the plaintiffs do not argue in the usual manner that the findings are clearly erroneous, but rather that the court reviewed the facts under the wrong standard and thus drew the wrong conclusions from those facts. A large number of the court's findings are therefore themselves not in dispute and, as discussed below, when reviewed under the standards this Court has adopted, point only to institutional, not constitutional, inequities. Two components at issue, however, bear directly on the choices afforded to current and potential students at Mississippi universities. Mission designation and admissions criteria require close review, since it is chiefly through these components that Mississippi either satisfies or fails to satisfy its duty to provide true choice to its citizens.

(i)

The plaintiffs argue that the mission designations perpetuate the inequalities of the prior dual system, because missions were assigned on the basis of the

institutional resources as they existed at the time of designation. The essence of the argument is that historically black institutions remain "Black Schools" by the regional or urban designation. We recognize that for purposes of this lawsuit it is necessary to describe institutions as either historically black or historically white. But since this lawsuit examines the current practices of the state of Mississippi, the use of the terms Black School and White School, based as they are on racial identifiability alone, is misleading. In the context of mission designation these terms imply that institutions were an urban or regional designation as an individual would wear the mark of a lower rank. What is wholly ignored by the terms Black School and White School is that the rights of citizens, not institutions, are at issue in this lawsuit, and it is from the standpoint of individual rights, not institutional parity, that Mississippi's practices must be reviewed. The law clearly does not permit state universities to assert equal protection rights in the manner of an individual. *See United States v. Alabama*, 791 F.2d 1450, 1454-57 (11th Cir.1986), *cert. denied*, 479 U.S. 1085, 107 S.Ct. 1287, 94 L.Ed.2d 144 (1987). Despite the plaintiffs' assurance that they do not make any such argument, their desire that Mississippi universities be redisignated so as to enlarge the scope of education at the historically black institutions is no less than a request to allot an equal protection remedy to those institutions in the manner of an individual. If black citizens in Mississippi may choose among any of the eight universities in the state, it is no denial of their right to equal protection that certain institutions formerly segregated by law continue to provide a more limited range of educational options than other institutions in the state.

The district judge found that the mission designations were not motivated by a discriminatory purpose but were rationally based on sound educational policies and a need to conserve scarce educational resources. *Ayers I*, 674 F.Supp. at 1561. Dr. Larry Leslie, Professor and Director of Higher Education at the University of Arizona, testified for the plaintiffs concerning the funding of the institutions. In one portion of his analysis he sought to compare the funding among the institutions within each of the mission designations. Because there were no predominantly black institutions in the comprehensive category and no predominantly white institutions in the urban category, he compared the three comprehensive schools to the one urban school. As of 1986 he found greater total revenue per student, greater state and local appropriation, greater tuition and fees collected, and somewhat greater gifts, grants, contracts, and other income at the comprehensive universities than at the urban, predominantly black, university. It is reasonable to conclude that, at least to some degree, these findings reflect the different missions of the institutions being compared. In comparing both predominantly black and predominantly white institutions within the regional category, however, Dr. Leslie described his findings as "mixed." As of 1986 Alcorn State and Mississippi University for Women received the greatest total revenue per student, with Delta State and Mississippi Valley State somewhat far behind. Alcorn State also collected more in tuition, fees, gifts, grants, contracts, and other income than any other regional university, and spent markedly more for instruction and other activities per student. Dr. Leslie's testimony as a whole indicates that the state is faithful to the mis-

sion designations and is not using them to disguise unequal treatment of those who attend predominantly black institutions.

Dr. John Millet, an academic consultant on issues in higher education and administration, testified for the defendants on the subject of mission designations. He believed that the 1981 mission statements had confirmed the existing structure of the state universities. He also stated that the United States Department of Education similarly classifies all academic institutions by purpose as either doctoral granting, comprehensive, general baccalaureate, specialized, and two-year. In his opinion Mississippi's mission designations were well-defined, educationally sound, and efficient.

Dr. Joseph Johnson, Vice President for Development at the University of Tennessee, testified for the defendants as an expert in higher education administration and finance. He stated that in a 1984-85 study comparing Mississippi's comprehensive universities (historically white) to universities of similar mission elsewhere in the South, the Mississippi institutions faired worse in funding than all other institutions. The one urban institution (historically black) and the four regional institutions (two historically black and two historically white) in Mississippi, on the other hand, stood above the average for like institutions in the South. For the academic year 1985-86 he believed that the two predominantly black universities designated as regional were much better financed than Mississippi's comprehensive institutions relative to institutions of similar mission in other states.

Dr. Thomas Meredith, an academic programs officer for the Board of Trustees, testified that the mission statements did have the effect of maintaining

the status quo of program offerings at the predominantly black universities. He was asked by counsel for the United States whether the mission statements limited the level and scope of programs at those institutions, and responded as follows:

> It put boundaries around all institutions. Up until that time all institutions had been operated under the premise that they needed to do everything for everyone. We were a state of two and a half million people and dwindling resources, and the Board of Trustees felt that it needed to give each institution a direction, and boundaries as well, and utilizing all of the elements that you see in the mission statements that the state would be covered. All of those things would be addressed that this state needed to be about and needed to have, but, yes, institutions did have boundaries. You need to concentrate your resources on certain things and quit trying to just keep on doing more. That was a problem.

The record therefore supports the plaintiffs' argument that the mission designations had the effect of maintaining the more limited program scope at the historically black universities. As noted above, however, this fact alone does not deny the plaintiffs their right to equal protection. The record amply supports the findings of the district court that the designations are commonly used, educationally sound, and not motivated by discriminatory intent. Those findings are not clearly erroneous. This is not to say the mission designations adopted by Mississippi efficiently allocate the state's resources. The district judge concluded the very opposite. *Ayers I*, 674 F.Supp. at 1563-64. This Court nevertheless cannot pass on the

financial wisdom of the designations. It is necessary only that black citizens enjoy full equal protection of the laws in attending their choice of institution, however financially infirm the system of higher education as a whole may be.

(*ii*)

The plaintiffs challenge the policies governing admission to the eight universities on several grounds. They first argue that the ACT requirement was adopted for a discriminatory purpose and continues to have a severe discriminatory impact on black applicants. They therefore argue that the ACT policy is intentionally discriminatory and violates equal protection. In support of their argument they cite *Hunter v. Underwood*, 471 U.S. 222, 105 S.Ct. 1916, 85 L.Ed. 2d 222 (1985). In *Hunter* the Supreme Court struck down a provision of the Alabama Constitution adopted by convention in 1901 which disenfranchised persons convicted of crimes of moral turpitude. The Court held that because the provision was motivated by a desire to discriminate against blacks and the provision continued to have that effect, it violated equal protection. *Id.* at 233. The plaintiffs' argument ignores the fact that Mississippi's current admissions policies trace chiefly to the latter 1970's and, as the district court correctly found, the Board was not then motivated by discriminatory intent but by the problem of underprepration of incoming students. The racial impact of the Board's 1961 blanket ACT requirement, adopted undeniably for discriminatory purposes, has been negated by the numerous qualifications and exceptions outlined earlier. The bare requirement that the test be taken no longer prevents anyone's admission to Mississippi universities. The ability of an applicant to transfer from a junior college without satisfying an ACT score requirements were not adopted until long after conclude that no applicant is denied the opportunity to attend a Mississippi university for failure to achieve a particular score. In addition, minimum score requirements were not adpoted until long after the test requirement, and the fact that the minimum score requirement may have discriminatory impact does not render it unconstitutional. *Washington v. Davis*, 426 U.S. 229, 239-41, 96 S.Ct. 2040, 2047-48, 48 L.Ed.2d 597 (1976).

The plaintiffs also argue that the defendants' admissions practices are intentionally discriminatory, because the Board does not require the use of high school grades in conjunction with ACT scores. The plaintiffs note that the American College Testing Program recommends that ACT scores be used in conjunction with other criteria such as grades in order to gain as complete a profile as possible of the applicant.

We find no support in the record for the assertion that the Board's failure to use grades as an admissions component points to intentional discrimination. First, while the Board itself does not require the use of high school grades, the individual institutions do use grades in identifying high-risk or exceptional students for special admission. Second, even assuming the policy is narrow, inaccurate, and educationally unsound, it does not follow that the policy is thereby intentionally discriminatory. Third, Dr. Meredith testified that in 1976 there was concern both in Mississippi and nationally with grade inflation, that grades did not mean as much as they used to mean, and that they were not a true reflection of what an applicant had

learned. He stated that primary and secondary schools varied tremendously from one part of the state to another, particularly in the sciences where, for example, a given school might offer chemistry without providing lab facilities. He also stated that the Board was advised by ACT administrators that while the use of grades with the ACT would provide a better assessment, they were satisfied with the use of the ACT alone. Dr. Meredith's testimony is supported by the fact that, as with grades generally, the Board does not require students to achieve a certain grade point average in completing the core curriculum.

The plaintiffs also argue that the district court's findings improperly focussed on reasonableness and neutrality rather than viewing the policies from the standpoint of an affirmative remedial obligation. Although we believe, as discussed above, that the duty outlined in *Green* does not apply in this case, we would be reluctant to say the defendants have not met their duty even under *Green*. The admissions policies of the various institutions are extremely flexible and address both academic preparation and the need to recognize less common measures of achievement. The comprehensive institutions maintain a very modest ACT score requirement while setting aside a portion of their enrollment for those who do not meet the objective criteria. Only a few black first-time applicants are turned away from the comprehensive universities for failure to meet the ACT score requirement. Students are required to satisfy a course of core studies in high school, but they are required only to attend, not to achieve a particular grade-point average. The district court gave full consideration to all aspects of the admissions process and found that current admissions policies and procedures in effect in Mississippi universities were adopted and developed in good faith and for nondiscriminatory purposes. These findings are not clearly erroneous.

(*iii*)

The plaintiffs have raised several arguments regarding racial incidents at the University of Mississippi, the racial composition of the faculty and staff, unsuccessful applicants for adminstrative positions at Mississipupi State University, and the fact that a black has not occupied a particular seat on the Board of Trustees. While these problems may be serious, they do not provide enough of a factual basis to persuade us that the district court erred in concluding Mississippi had met its duty to dismantle its dual system.

With respect to the racial composition of the faculty and staff specifically, the record indicates that from at least 1977 to 1986 the percentage of black faculty hired at each of the five predominantly white universities exceeded the black representation in the qualified labor pool. Bernard Siskin, a statistician and labor analyst, testified on faculty hiring and composition, among other matters. He provided both a "snapshot" of faculty present at a given time and a study of hiring over a period of time. The current aggregate faculty composition showed black representation lower than the qualified labor pool, a result Siskin attributed to pre-1974 hires and high black turnover. At two of the institutions Siskin stated that the discrepancy between black hiring and current black representation had disappeared through post-1974 hiring and the turnover of older faculty.

Dr. Forest Wyatt, President of Delta State University, testified that the Board had communicated with his institution regarding increasing black faculty

and other employment. He stated that he was instructed to increase black presence at Delta State and that the instructions were forwarded to deans, department heads, and others in employment positions at the university. He believed those individuals carried out those goals to the best of their ability. He also testified specifically regarding the university's successful effort to recruit a black admissions counselor to attract more black students to the university.

Dr. Victor Feisal, Vice-president for academic affairs at Memphis State University, testified concerning the difficulties in minority faculty recruitment. He stated there was a tremendous shortage of black students with graduate degrees, and extreme competition among educational institutions and the business community for their services. He also stated that financial conditions made it particularly difficult for Mississippi to attract those candidates, because Mississippi is not competitive with other states in faculty salaries and funding of higher education.

(*iv*)

The plaintiffs have pointed to disparities between the historically black and historically white institutions regarding program offerings and duplication among universities and branch centers, faculty, funding, library volumes, facilities, and land grant programs. The district court correctly concluded that the defendants had met or exceeded their duty to disestablish prior de jure segregation in these areas, and we have nothing to add to the district court's opinion except the following.

The district court incorrectly concluded that the disparties among the institutions were not reminis-

cent of the former de jure segregated system. *Ayers I*, 674 F.Supp. at 1560. On the contrary, the disparties are very much reminiscent of the prior system. The inequalities among the institutions largely follow the mission designations, and the mission designations to some degree follow the historical racial assignments. But this does not mean the plaintiff class is denied equal educational opportunity or equal protection of law. The defendants have adopted good-faith, race-neutral policies and procedures and have fulfilled or exceeded their duty to open Mississippi universities to all citizens regardless of race. Their policies toward institutions are not racially motivated. Institutional differences remain, but in order to level those differences under principles of equal protection this Court would somehow have to adopt the plaintiffs' terms "Black School" and "White School" and attach legal significance to those terms. This Court therefore cannot adjust the equities in the manner the plaintiffs request unless we declare, with the force of law, that Alcorn State University, Jackson State University, Mississippi Valley State University, shall henceforth be designated as Black Schools for black students, and shall at all times remain equal in funding, offerings and facilities with their counterparts designated as White schools. We need not cite the source for this revolting principle.

The judgment is AFFIRMED.

GOLDBERG, Circuit Judge, with whom POLITZ, KING and JOHNSON, Circuit Judges, join, dissenting:

I respectfully dissent from the well-organized and well-expressed opinion written by Judge Duhé for the

en banc court. This opinion is an important one, and one would expect there to be diverse opinions, but that does not diminish the strength of my conviction that the district court judgment should be reversed. Judge Duhé has admirably expounded the en banc court's point of view, but I adhere to the panel's majority opinion. *Ayers v. Allain*, 893 F.2d 732 (5th Cir. 1990).

I do not wish to trespass on the court's time in needless elaboration or repetition. The district court and our panel have already thoroughly analyzed this case. Many hours have previously been expended in its explication. The jurisprudence explored and the authorities cited in the panel's majority opinion clearly point to the conclusion that this case should be remanded to the district court. I would remand for proceedings not inconsistent with the principles and doctrines expostulated in the original panel's majority opinion.

PATRICK E. HIGGINBOTHAM, Circuit Judge, concurring * in part and dissenting in part. POLITZ and KING, Circuit Judges, join in the dissent portion of this opinion.

The district court held that the State of Mississippi has no duty to eliminate the vestiges or effects of its overt discrimination against blacks in the administration of its university system. To the contrary, the district court concluded that the state's obligation ended when it adopted an open admissions policy and stopped

* I would affirm the district court's judgment that Mississippi is not engaged in purposeful discrimination. It follows that the inquiry on the remand I would order would focus on the causal relationship between the de jure system and the present practices, as I explain in the text.

purposeful racial discrimination. Today, we affirm this erroneous view of Mississippi's obligation to its black residents. I dissent.

The district court has prepared a careful opinion exploring the difficulties and complexities of the university system, and the majority finds record support for the district court's factual findings. The difficulty is that the majority today deferentially affirms the district court's answer to the wrong question. That deference is undue. It is well settled that "if the trial court bases its findings upon a mistaken impression of applicable legal principles, the reviewing court is not bound by the clearly erroneous standard." *Inwood Laboratories v. Ives Laboratories*, 456 U.S. 844, 855 n. 15, 102 S.Ct. 2182, 2189 n. 15, 72 L.Ed.2d 606 (1982) (citing *United States v. Singer Manufacturing Co.*, 374 U.S. 174, 177, 83 S.Ct. 1773, 1775, 10 L.Ed.2d 823 (1963)). I would not attempt to adopt the correct legal standard and on appeal apply it to these facts. Rather, I would remand this case to the district court for application of the correct legal standards. It would be for the trial court to decide whether those standards necessitate a new factual inquiry.

The majority denies that *Green v. County School Board*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), extends to higher education, and Judge Goldberg's dissent disputes this assertion. With all respect, the question is not the application of *Green* to higher education. *Green* rejected freedom of choice plans as a complete response to the state's duty to end segregated schools. Contrary to the implicit assumptions of the majority, however, *Green* is not the genesis of the state's constitutional duty to correct the injury it has unconstitutionally caused. The duty to undo the wrong springs directly from *Brown v. Board of Edu-*

cation, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

To my light, *Green* rests on a system of mandated education and has little application to a system of higher education that has no compulsory attendance. But concluding that *Green* is inapplicable to higher education does not carry the further conclusion that a state that has maintained a de jure system does not remain under a continuing obligation to otherwise administer its university program in ways calculated to undo the injuries of its segregated past.

Bazemore v. Friday, 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986), is not contrary to the position I urge today. In *Bazemore* the court held that, because the students enjoyed the right to choose the club they wished and because the differing make-ups of the clubs were not the product of discrimination, the state had done its duty. Here, we deal with the delivery by a state of an array of educational services. That it has no constitutional duty to achieve any particular racial mix is not necessarily a full response to the more general question of whether it has discharged its duty to undo its wrong. Having openly discriminated in the delivery of educational service in virtually all its operations, Mississippi remains under a duty not to perpetuate segregation by its policies. Curiously, the district court found that

> the defendants undertake to fund more institutions of higher learning than are justified by the amount of financial resources available to the state, but that is a policy decision of the Legislature that affects the quality of the institutions among which the monies must be so thinly divided. Such a decision by the Legislature goes to

> the quality of the institutions and not to the constitutionality of the funding.

674 F.Supp. 1523, 1564 (N.D.Miss.1987). The district court noted the

> inefficiency . . . of having two state universities only 20 miles apart in the eastern part of the state with separate administrations and duplicating programs, and two state universities on the western side of the state only 50 miles apart, each with separate administrations and duplicating programs.

Id. at 1563-64. The district court also found it irrelevant that the state funded "traditionally black and traditionally white universities which duplicate as many as 75% of each other's baccalaureat programs." *Id.* Funding decisions such as these, however, cannot be passed over so summarily if they frustrate the state's duty to eliminate the vestiges of past discrimination.

I reject *Green*'s application to university education because I do not believe the Fourteenth Amendment supports a substantive right to a particular racial mix, certainly in the absence of mandatory and state controlled attendance. I am persuaded that in this context the command of the Fourteenth Amendment translates to fair *process* and here find some common ground with the majority. When a system of higher education presents every person with a truly equal and free choice among schools, that system will be constitutional. Well and good, but the long years of separatism have worn deep traces—so deep that declarations of freedom of choice draped over them are not so easily translated to real choice. The force of this reality led to the much debated constitutional rule

in *Green*, fourteen years after *Brown v. Board II*, and although I maintain that its restatement of *Brown* is not applicable to higher education, it yet informs the present question whether Mississippi is discharging its duty.

A state violates its duty to undo its wrong when it makes decisions that directly reinforce the historical traces of separate post-secondary educational paths for blacks and whites. When a party challenging a particular state action demonstrates the adverse effect of that action on the state's duty to remove vestiges of discrimination, the burden should then shift to the state to identify the legitimate state purpose of the action and to prove the absence of an equally effective, less frustrating alternative. Despite the difficulties in other contexts with this familiar equal protection analysis, here it provides a disciplined *process*-based inquiry that pushes federal courts toward the sidelines of education policymaking without leaving states free to ignore their duty. This analysis highlights the importance of segregative *effects* and locates the essential causal relationship between a past de jure dual system and a present de facto one. *Columbus Board of Education v. Penick*, 443 U.S. 449, 501, 99 S.Ct. 2941, 2958-59, 61 L.Ed.2d 666 (1978) (Rehnquist, J., dissenting) "The relevance of past acts . . . depend[s] on whether 'segregation resulting from those actions continues to exist.'" (quoting *Keyes v. School District*, 413 U.S. 189, 210, 93 S.Ct. 2686, 2698, 37 L.Ed.2d 548 (1973)). Finally, it recognizes that the affirmative duty to undo is confronted in the ongoing administration of the schools. It differs from the majority in another critical respect by not insisting on proof of purpose. *Washington v. Davis*, 426 U.S. 229, 96

S.Ct. 2440, 48 L.Ed.2d 597 (1976). This case is about remedy—detecting present effects of the earlier wrong and defining the remedial response. By insisting on proof of purpose, the majority wipes away the earlier wrong by denying the very existence of any notion of perpetuation. Perhaps as a matter of fact Mississippi has discharged its duty to undo any present injury from the past. However, we cannot avoid the inquiry by restricting it to purposeful acts.

The majority rests its decision on the principle of free choice. I have no quarrel with this abstraction since I view Mississippi's constitutional obligation to be to ensure that freedom of choice is real, not just theoretical. But it is not enough that Mississippi no longer operates a de jure segregated educational system; the state must also cease to perpetuate the traces of segregation.

The judiciary is not competent, nor is it otherwise the appropriate institution, to set education policy. But we are duty-bound to decide this case, a case insisting that the state exercise its right to run its schools within the limits of the Constitution. I do not claim to have answers to the difficult questions to be faced in the specifics of what Mississippi can and must do. Perhaps there is little, but that must be decided by the trial judge operating under the correct legal standard.

We must view this case against the bold relief of the undisputed fact that the first black students were not admitted to Mississippi's white universities until 1962 and that white students were not admitted to the black universities until 1966. A disproportionate share of funding for facilities went without apology to the white institutions until at least 1970, and faculty desegregation did not even begin until the

1970's. Indeed, no comprehensive plan to dismantle the double system was adopted until 1974, and that plan was rejected by H.E.W. and has never been funded. The black schools were distinctively inferior to the white schools. As part of its program of diversity and free choice the schools were assigned educational missions—the white schools were to be "comprehensive" whereas the black "urban" schools were to serve a less ambitious purpose. This earlier discrimination in funding is now said to be only a reflection of the schools' different missions and are pointed to as examples of desired diversity in educational offerings.

I do not say from this remote appellate post that Mississippi has failed to meet its duty. I say that we have not yet asked that question, and we must.

APPENDIX B

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 88-4103

JAKE AYERS, SR., ET AL., PLAINTIFFS, JAKE AYERS, JR., BENNIE G. THOMPSON, LEOLA BLACKMON, LILLIE BLACKMON, LOUIS ARMSTRONG, DARRYL C. THOMAS and LEON JOHNSON, PLAINTIFFS-APPELLANTS,

and

UNITED STATES OF AMERICA,
INTERVENOR-APPELLANT,

v.

WILLIAM ALLAIN, GOVERNOR,
STATE OF MISSISSIPPI, ET AL.,
DEFENDANTS-APPELLEES.

Feb. 6, 1990

Appeals from the United States District Court
for the Northern District of Mississippi

Before GOLDBERG, JOHNSON and DUHÉ, Circuit Judges.

GOLDBERG, Circuit Judge:

" 'The time has come,' the Walrus said, 'To talk of many things:

Of shoes—and ships—and sealing wax—Of Cabbages —and kings—

And why the sea is boiling hot—and whether pigs have wings.' " [1]

We'll sit and chat of times gone by, and visit with the queens

Brown, and *Sweatt* and *Meredith* not to mention the fertile *Green*

And then we'll see why *Ayers* should fly and how equality is king!

Today we write an opinion concerning a class action lawsuit involving the public universities of Mississippi. The question is whether the racial identity of these institutions results from the free choice of the students or from state policies and practices.

A group of plaintiffs filed this lawsuit against the Governor of Mississippi, the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, the Commissioner of Higher Education, and other state officials in January, 1975. These private plaintiffs consists of a class certified by the district court as:

> all black citizens residing in Mississippi, whether students, former students, parents, employees or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by said Board of Trustees.[2]

[1] Lewis Carroll, *Through the Looking Glass and What Alice Found There*, Chapter IV, Tweedledum and Tweedledee (1872), *reprinted in The Complete Illustrated Works of Lewis Carroll* 117 (Guiliano ed. 1982).

They have alleged that the defendants were maintaining and perpetuating a racially dual system of public higher education in violation of the equal protection clause of the fourteenth amendment and Title VI of the Civil Rights Act of 1964.

The United States intervened as a plaintiff shortly thereafter making identical allegations. The private plaintiffs and the United States, collectively referred to as "the plaintiffs," seek an injunction directing the defendants to eliminate all vestiges of the racially segregated system of higher education in Mississippi.

The defendants answered the plaintiffs' allegations arguing that the existence of predominantly one race universities does not violate the equal protection clause because Mississippi has implemented, in good faith, a nondiscriminatory admissions and operations policy. The defendants believe that the identifiability of the universities by the racial composition of the student population results from the free and unfettered choice of the students themselves.

In the spring of 1987, a five week trial was conducted in Oxford, Mississippi following twelve years of pretrial preparation. The record consists of 4,400 pages of trial testimony and approximately 2000 exhibits. At the end of 1987, the district court ruled for the defendants on the issue of liability and dismissed the plaintiffs' case.[3] The plaintiffs appeal.

[2] *Ayers v. Allain*, 674 F.Supp. 1523, 1526 (N.D.Miss.1987).

[3] *Id.* at 1564.

I. THE FACTS

A. *A History of De Jure Discrimination*

The Mississippi university system consists of eight institutions and several entities under the plenary power of a Board of Trustees (the "Board").[4] These universities were segregated by race through the spring of 1962, contrary to the Supreme Court's 1954 mandate in *Brown v. Board of Education*,[5] when our court forced the University of Mississippi to admit its first black student, James Meredith.[6] Prior to the

[4] The Board, created in 1932, is the governing body of all of the state universities in Mississippi. The Board consists of 13 members. From 1932 to 1972, the members of the Board were all white. At the time of trial in 1987, three of the thirteen members were black.

The governor of Mississippi, with the consent of the Mississippi Senate, appoints twelve members of the Board. Ten must reside in the geographical district that they represent. The other two are chosen at-large from the state. Members serve staggered twelve year terms so that every four years four seats are open for selection.

In addition, a special seat belonging to the University of Mississippi alone, designated the LaBauve Fund seat, has a four year tenure so that the seat is available at the same time one-third of the Board turns over. The month before the district court issued its opinion, the people of Mississippi abolished by popular vote the LaBauve Fund seat. The governor appointed and the senate confirmed four white trustees and one black trustee for the end-of-term vacancies which occurred in 1972, 1976, 1980, and 1984. For intra-term vacancies, the appointments have always been white trustees.

[5] 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

[6] In 1962, Judge Wisdom, writing for our Court, ordered the University of Mississippi to admit a black transfer student named James Meredith. *Meredith v. Fair*, 305 F.2d 341 (5th Cir.1962). Meredith was a student at Jackson State College when he applied for admission to the University of

admission of Meredith, no black students attended any of the historically white universities and no white students attended any of the historically black universities. The historically white universities were: (1) the University of Mississippi; (2) Mississippi State University; (3) the University of Southern Mississippi; (4) Mississippi University for Women; and, (5) Delta State University. The historically black universities were what are now known as (1) Jackson State University; (2) Alcorn State University; and, (3) Mississippi Valley State University.

At the time of the *Meredith* decision, the Board had implemented segregative policies encompassing: (1) student enrollment; (2) the maintenance of branch centers by the historically white universities in close proximity to the historically black universities; (3) the employment of faculty and staff; (4) facility provision and condition; (5) the allocation of financial resources; (6) academic program offerings; and, (7) the racial composition of the Board and its staff.[7] The Board did not permit black students to enroll at any of the historically white universities

Mississippi in January, 1961. He sought transfer because he found Jackson State College to be substandard. The University of Mississippi denied his admission application and in response Meredith filed suit in federal district court. Judge Wisdom wrote: "[t]he efforts of the Board of Trustees [of the State Institutions of Higher Learning] and the officials of the University of Mississippi together with various state officials, including the Governor and the Lieutenant Governor of the state of Mississippi, and the Mississippi Legislature to impede and deter efforts to integrate the student body at the University of Mississippi during the 1961-62 school year are well documented."

[7] *Ayers*, 674 F.Supp. at 1551.

under its auspices.[8] The years each of the historically white universities first enrolled a black student are as follows:

University of Mississippi	1962
Mississippi State University	1965
Mississippi University for Women	1966
University of Southern Mississippi	1967
Delta State University	1966

Similarly, white students did not attend a historically black university until the late 1960's:

Alcorn State University	1966
Jackson State University	1969
Mississippi Valley State University	1970

The racial identification of Mississippi's public universities continues to the present day. Undergraduate programs included the following percentages of black enrollment between the years 1973-74 and 1985-86:

	1973-74	1980-81	1985-86
Historically White Institutions [9]			
Delta State University	14.3	17.1	17.59
Mississippi State University	5.6*	11.2	11.0
Mississippi University for Women	9.9	19.3	18.0
University of Mississippi	3.5	7.0	5.9
University of Southern Mississippi	4.5	11.3	14.24
Historically Black Institutions			
Alcorn State University	99.7	96.9	95.6
Jackson State University	99.6	95.2	91.9
Mississippi Valley State University	99.7	99.8	99.3

[8] *Id.* at 1529.

[9] * The figure for Mississippi State University for 1973-74 is an average derived from 1972-73 and 1974-75 data because data for 1973-74 are not available.

The racial composition of the graduate programs reflects a similar pattern.

	1973-74	1980-81	1985-86
Historically White Institutions [10]			
Delta State University	41.6	38.3	26.2
Mississippi State University	12.8**	9.6	8.0
Mississippi University for Women	14.5	18.0	13.0
University of Mississippi	7.6	8.4	7.5
University of Southern Mississippi	9.2**	8.7	8.1
Historically Black Institutions			
Alcorn State University	0	99.4	96.0
Jackson State University	91.8	85.3	59.0**
Mississippi Valley State University	0	94.7	96.7

In summary, regarding undergraduate enrollment in 1986, over 99% of the white students (26,759 out of 26,953) were enrolled in historically white institutions and over 71% of the black students (9,125 out of 12,826) were enrolled in historically black institutions.

B. *Admissions Policies*

The historically white institutions require all applicants to achieve a minimum score of 15 on the ACT, a standardized college admissions examination, as a prerequisite for admission. The Board instituted this policy soon after the court ordered admission of James Meredith to the University of Mississippi in 1962 because it deterred black enrollment.[11] At the time, the average ACT score for white Mississippi

[10] ** In 1985-86, Jackson State University enrolled 59% black, 13.3% white, and 27.7% other-race pupils. For 1973-74, Mississippi State University and the University of Southern Mississippi are averages of 1972-73 and 1974-75 data because 1973-74 data are not available.

[11] *Ayers*, 674 F.Supp. at 1555.

students was 18 while the average for black Mississippi students was 7.

In 1976, the Board augmented the ACT requirement requiring a minimum score of 9 for admission to any of Mississippi's public universities ostensibly in response to complaints voiced by university faculty and staff regarding the preparation of incoming freshmen. This ACT minimum was directed at the historically black schools. The three largest historically white schools maintained the 15 ACT minimum.

The Board again modified admission requirements in 1977 and in 1982. In 1977, the Board created an exception to the 9 point ACT minimum. Students with ACT scores of 9 or above could be admitted to the historically white schools if they fell into a special talents or high risk category. And as of 1982, the Board required high school graduates to complete a group of college preparatory courses as an admissions prerequisite.

The college preparatory course requirement applies to all of Mississippi's public universities but the ACT exception is more liberal at the historically black institutions. The historically white institutions may enroll a number of students not to exceed five percent of the previous academic year's freshmen class under the talented or high risk exception.[12] At

[12] The record suggests that the availability of the high risk exceptions at the historically white schools were not well publicized in their recruiting materials. The president of the University of Southern Mississippi testified that he was reluctant to advertise the existence of the exceptions, and that the University of Southern Mississippi did not encourage applicants with less than 15 on the ACT to apply. Students with scores below 15 were automatically rejected. Their record was then reviewed at a later time in the spring or summer to determine if a department had requested a particular student's admission.

The other historically white schools do not appear to admit large numbers of students with ACT scores below 15. In 1986, applicants with less than a 15 composite score on the ACT accounted for approximately nine percent of the entering class at Delta State University; approximately five percent at Mississippi State University; approximately four percent at the University of Mississippi, and zero percent at Mississippi University for Women. In contrast, over 50% of the freshmen admitted to each of the historically black institutions that year scored less than 15 on the ACT.

Jackson State University, however, the limit is eight percent and at Alcorn State University and Mississippi Valley State University the limit is ten percent.

Apart from the ACT exception, the prerequisites for admission to Mississippi's public universities are thus the completion of a core curriculum in high school and a minimum score on the ACT which varies with the institution. Presently, the minimum score is 15 at the historically white institutions and 13 at the historically black institutions.[13] Completion of these requirements allows automatic admission.

However, the organization that developed the ACT, the American College Testing Program, advises colleges to use the ACT in conjunction with other considerations so that a whole picture of a student can be assessed rather than one based solely on a standardized test. In the case of minority candidates, the American College Testing Program stresses the inadequacy of the ACT score as the sole criterion for admission:

[13] In 1985-86, roughly 7 of 10 white high school graduates and 3 of 10 black high school graduates scored 15 or higher on the ACT.

> Because many factors (e.g., socioeconomic status, differences in educational opportunities, culture, etc.) can potentially affect the test performance of many students who are members of minority groups, ACT believes that assessment for the purpose of college admissions should reflect as complete a picture as possible of students and should include other information in addition to test scores. . . . *In the case of minority students whose prior educational opportunities have been limited, it becomes especially appropriate to make use of the total scope of information—cognitive as well as non-academic—provided by the ACT assessment.*[14]

Moreover, ACT policies state that "investigation[s] of differential validity for sub-groups of . . . minority/non-minority [applicants]" should be done where possible.[15] This type of admissions investigation refers to the effectiveness of ACT scores in predicting college success for black as opposed to white applicants. Apparently, ACT score data should not be used as the sole criterion for admission/selection decisions especially regarding minority candidates. It is thus no surprise that ACT provides without charge, materials allowing a more accurate selection of individual students utilizing high school grades. The state universities of Mississippi, however, continue to consider only the single ACT score to define the automatic admission pool.

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[14] Board exhibit 186 at 6-7 (emphasis added).

[15] Plaintiff exhibit 350.

C. *The Relative Composition of the Faculties*

Mississippi's public universities had the following percentages of black faculty in 1985-86: [16]

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[16] Only 60 of the 2,563 faculty employed by the historically white institutions during the 1985-86 school year were black. Yet Dr. Lucious Williams, Assistant Vice Chancellor for Academic Affairs, maintained that the University of Mississippi, from about 1983-86, kept a minority faculty vita bank with about 200 vita on file on an annual basis.

There also appears to be a disparity between the extent of the faculty's education at the historically white institutions and the historically black institutions:

Historically White Institutions*

	Total	% Full Professors	% Instructors	% with Doctorate
UM	673	25.9%	24.4%	59.0%
MSU	895	42.8	6.5	70.0
USM	675	26.4	12.9	64.4
DSU	203	32.0	20.7	52.7
MUW	129	35.7	14.0	52.7

Historically Black Institutions**

	Total	% Full Professors	% Instructors	% with Doctorate
JSU	359	22.6%	16.7%	64.9%
ASU	174	10.9	43.1	46.6
MVSU	138	18.8	21.7	42.0

* The acronyms for the historically white institutions are: (1) UM for the University of Mississippi; (2) MSU for Mississippi State University; (3) USM for the University of Southern Mississippi; (4) DSU for Delta State University; and (5) MUW for Mississippi University for Women

** The acronyms for the historically black institutions are: (1) JSU for Jackson State University; (2) ASU for Alcorn State University; and, (3) MVSU for Mississippi Valley State University

Historically White Institutions:

University of Mississippi	1.5%
Mississippi State University	2.3
University of Southern Mississippi	2.4
Mississippi University for Women	1.9
Delta State University	5.0

Historically Black Institutions:

Jackson State University	67.3%
Alcorn State University	67.9
Mississippi Valley State University	73.5

Similar to racial composition, the variation in faculty salaries between the historically white institutions and the historically black institutions is vast.[17]

Historically White Institutions:

	1979-80	1986-87
University of Mississippi	$20,794	$30,757
Mississippi State University	21,153	31,957
University of Southern Mississippi	19,817	31,964
Mississippi University for Women	17,836	26,507
Delta State University	17,265	26,213

Historically Black Institutions:

	1979-80	1986-87
Jackson State University	$18,047	$26,669
Alcorn State University	16,019	21,291
Mississippi Valley State University	15,546	22,746

The district court justified the disparities in racial composition by referring to the shortage of qualified minority applicants for faculty positions.[18] For example, a statistic cited by the district court indicates that from 1977 to 1982, out of 1,067 Ph.D.'s awarded in chemical engineering in the United States, only 6 or less than one percent were awarded to blacks; out

[17] United States exhibit 694 (q).

[18] *Ayers*, 674 F.Supp. at 1563.

of 1,679 Ph.D.'s awarded in electrical engineering, only 29 or less than two percent were awarded to blacks; and in European history, a field included within the social sciences where blacks are generally best represented, out of 1,165 Ph.D.'s only six or less than one percent were awarded to blacks.[19] Moreover, the district court continued, both businesses and other educational institutions compete for the number of blacks with terminal degrees.[20]

The district court's explanation cannot, however, be understood without reference to the Board's 1974 Plan of Compliance (the "Plan"). In the late 1960's, the United States Department of Health, Education, and Welfare ("HEW") requested the State of Mississippi and the Board of Trustees to submit a proposal to desegregate Mississippi's university system. The Board responded by submitting the Plan in 1974. The objective of the Plan was to increase the enrollment and employment of minorities at the public universities of Mississippi. The Plan made projections for minority student enrollment and faculty and administration employment for the years 1973-81.

Significantly, the Plan accounted for matters that the district court found to excuse the Board's failure to hire more minority faculty. The Plan stated that "[t]he projections in regard to faculties of [the historically white institutions] take into account the limited supply of qualified black faculty. Institutions of higher learning throughout the nation, as well as business and industry, are vigorously seeking well-trained and highly qualified black employees."[21] The

[19] *Id.* at 1537.

[20] *Id.* at 1538.

[21] United States Exhibit 1 at page 12.

legislature, however, always under-funded the Plan. Predictably, the Plan did not change the racial composition of the respective faculties or administrations.[22]

D. *Institutional Mission and Academic Programs*

In 1980, the Board began to review all non-doctoral programs to define the role and scope of its public universities. The resulting "mission statements" classified the universities into three categories for funding purposes: comprehensive, urban, and regional. The Board designated Mississippi State University, the University of Mississippi, and the University of Southern Mississippi, historically white institutions, as comprehensive universities. The comprehensive designation meant that these institutions offered a greater number and higher level of degree programs than did the remaining universities and that each institution was expected to offer a number of programs on the doctoral level but not in the same disciplines.

[22] One objective of the Plan was to increase the employment of black administrators. At the historically white institutions, six of the 393 administrators (1.5%) were black at the time of the Plan. In 1983, nine years after the Plan was enacted, the percentage of black administrators for each institution was as follows:

Historically White Institutions:	
University of Mississippi	2.9%
Mississippi State University	0.7%
University of Southern Mississippi	2.0%
Mississippi University for Women	0.0%
Delta State University	0.0%
Historically Black Institutions:	
Jackson State University	94.1%
Alcorn State University	96.7%
Mississippi Valley State University	92.5%

Moreover, in 1986, at the highest administrative levels, the historically white institutions reported 22 officers, who were all white, despite a turnover of 15 positions since 1981. The historically black institutions had nine black officers and one white officer.

The only university designated "urban" was Jackson State. Jackson State's role is the service of the urban community, that is, the City of Jackson. Alcorn State University, Delta State University, Mississippi University for Women, and Mississippi Valley State University received the regional designation. The regional designation signifies a more limited programmatic focus. The Board expects each regional institution to restrict course offerings to undergraduate instruction.

1. *Program Offerings*

The Plan listed the programs available as of 1973-74:

Historically White Institutions [23]

	Bachelors	Masters	Specialist	Doctoral	Other	Total
UM	62	45	7	28	0	142
MSU	94	68	18	45	0	225
USM	108	73	27	37	0	245
MUW	37	14	9	0	1	62
DSU	34	13	4	0	0	51
Historically Black Institutions						
ASU	28	0	0	0	0	28
JSU	38	23	1	0	0	62
MVSU	26	0	0	0	1	27

The statistics indicate that the three white comprehensive universities offered more programs than the

[23] *See supra* note 16 for the meaning of the acronyms.

historically black universities. The historically black universities offered only 6.2% or 24 of the 388 graduate programs. The white comprehensive universities offered all 110 doctoral programs. Alcorn State University and Mississippi Valley State University were limited to undergraduate instruction. As of 1986, although change had occurred, this pattern of program offerings remained discernable. The schools ranked as follows regarding total programs offered:

	Total Programs
Mississippi State University	151
University of Mississippi	138
University of Southern Mississippi	124
Jackson State University	73
Delta State University	57
Alcorn State University	39
Mississippi University for Women	27
Mississippi Valley State University	17

No historically black institution in 1981 or 1986 offered a professional degree in programs such as law, medicine, dentistry, or pharmacy. The historically black institutions, on average, offered fewer graduate programs and fewer fields of study than did the historically white schools, and, had a smaller number of their programs accredited.[24]

[24] Disparities in program offerings between the historically black institutions and the historically white institutions continued to exist in 1985 and 1986 despite the promise of the Plan to give the historically black institutions priority for new programs. From 1975-86, the historically black institutions ranked lowest in the number of new programs approved by the Board:

Mississippi State University	22
Mississippi University for Women	17

[Continued]

[24] [Continued]

University of Southern Mississippi	16
Jackson State University	15
Delta State University	15
University of Mississippi	14
Mississippi Valley State University	6
Alcorn State University	2

Although an institution's refusal or failure to request new programs could affect these rankings, they suggest that the Board did not make an affirmative effort to place new programs at the historically black universities.

In 1986, the institutions ranked as follows among other criteria:

	Historically White Institutions					Historically Black Institutions		
Criteria	UM	MSU	USM	DSU	MUW	JSU	ASU	MVSU
Number of Bachelor Programs	3	1	2	4	7	5	6	8
Number of Graduate Programs	1	2	2	5	7	4	6	7
Total Programs	2	1	3	5	7	4	6	8
Fields-Bachelors	2	2	1	4	6	5	6	8
Fields-Masters	2	3	1	5	7	4	5	7
Fields-Doctorate	1	3	2	4	—	4	—	—
Library Volumes	3	2	1	6	5	4	7	8
Percentage of Faculty with Doctorate	2	1	4	3	7	5	5	8
Percentage of Faculty with Degree from Research University	1	2	4	5	8	3	6	6
Average ACT Score	1	2	5	4	2	7	5	8

See supra note 16 for the meaning of the acronyms.

2. *Program Duplication*

After the 1980 review, the Board ordered a substantial decrease in degree programs at both the historically black and the historically white institutions. These reductions affected the unnecessary program duplication existing between the universities. Unnecessary duplication refers to the duplication of programs considered nonessential to a liberal arts education.[25]

The historically white institutions, however, continue to unnecessarily duplicate programs offered at the historically black institutions. At the bachelors level, the historically white institutions unnecessarily duplicated 34.6% of the 29 programs offered by the historically black institutions as of 1985-86.[26] At the masters level, the historically white institutions unnecessarily duplicated nine of ten programs offered by the historically black institutions during the same period.[27]

The figures remain approximately the same when the white comprehensive universities are compared to the historically black universities. The district court found that the white comprehensive universities duplicated 32.7% of the programs offered by the historically black universities.[28] And at the masters level, the white comprehensive universities unnecessarily duplicated 86.2% of the program offered by the historically black universities.[29]

[25] In contrast, necessary duplication refers to the idea that every campus needs to teach basic courses fundamental to a proper education. Core subjects such as English, Mathematics, and History are thus not counted in determining "unnecessary" program duplication.

[26] *Ayers*, 674 F.Supp. at 1541.

[27] *Id.*

[28] *Id.*

There is also unnecessary duplication between the white comprehensives and Jackson State, the historically black institution with the urban designation. In 1986, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi, each unnecessarily duplicated over 30% of the bachelor's level programs at Jackson State, including degree programs in such fields as Banking and Finance, Social Work, and Law Enforcement.

Moreover, a considerable amount of unnecessary duplication among the black and white universities remains even if duplication between the comprehensive and noncomprehensive universities is eliminated from the analysis. Thirty-eight percent of the bachelor's level programs at Mississippi Valley are unnecessarily duplicated at Delta State, including degree programs in such fields as Business Management and Administration and Law Enforcement.

3. *Off Campus Offerings*

The historically white universities opened three off-campus centers in Jackson, Natchez, and Vicksburg, Mississippi near Jackson State University and Alcorn State University during the 1950's and 1960's. The historically white universities' placement of these centers in close proximity to the historically black universities was one aspect of the racially dual system of higher education in Mississippi existing at the time the University of Mississippi was forced to admit James Meredith.[30] In Jackson, the University

[29] *Id.*

[30] *Id.* at 1551.

of Mississippi, Mississippi State, and the University of Southern Mississippi began offering courses at off-campus centers, located near Jackson State University, with the Board's permission, in 1951, 1961, and 1964 respectively. The three centers merged into what is presently the Mississippi University Center (the "University Center") in Jackson in 1966. The Board granted permission to grant degrees in 1972. As of 1981, seventy-six percent of the bachelors degree programs and 90% of the masters degree programs at Jackson State University were also offered at the University Center. Currently, however, Jackson State University enjoys on-campus privileges at the University Center and retains veto authority over all programs offered.[31] The historically white universities offer only limited graduate programs and unique courses.[32]

In 1962, the University of Southern Mississippi opened a resident center, the Natchez Center, approximately 40 miles from Alcorn State University.[33] The Center initially offered three years of undergraduate work, but the Board subsequently authorized the award of baccalaureate degrees in elementary and secondary education and business administration. These degrees were also offered by Alcorn State.[34] As of 1981, the Natchez Center offered twenty percent of the bachelors degree programs and 66% of the masters degree programs available at Alcorn State. At present, the University of Southern Mississippi

[31] *Id.* at 1542.

[32] *Id.*

[33] *Id.*

[34] *Id.*

offers only noncredit extension courses at the Natchez Center.

Mississippi State University opened the Vicksburg Center in 1952. The center offered courses for local school teachers. In 1979, the Board authorized Alcorn State to offer several courses at the Vicksburg Center. A consortium arrangement between the two schools was approved the next year.

E. *Funding*

The legislature annually appropriates funds to Mississippi's public universities for basic educational and operating activities. The Board applies a formula to this appropriation to determine the level of support for each institution. The variables in the formula include the number of student credit hours for the previous year, field and level of instruction, and the Board-designated mission of the university. Under this formula, the comprehensive universities receive the most funds per student credit hour; the regional universities receive the least; and Jackson State, the urban university, falls in the middle.

Historically, the Board under-funded the black institutions to maintain a racially segregated system.[35] As a result, the historically white institutions received and spent more money on a per student basis.[36]

[35] *Meredith* took judicial notice of this practice in 1962. *Id.* at 1551.

[36] Dr. Larry Leslie, the U.S. expert on funding, testified that the predominantly white institutions receive and spend more money on a per student basis. Dr. Leslie's analysis included revenues generated by more recent Board policies and practices which the district court found more favorable to the historically black institutions.

Average Total Education and General Income Per Student

	1960	1980	1986
Historically White Institutions	$1,368	$5,547	$8,934
Historically Black Institutions	$ 699	$4,354	$6,171

Average Total Education and General Expenditures Per Student

	1960	1980	1986
Historically White Institutions	$1,351	$5,412	$8,516
Historically Black Institutions	$ 718	$4,310	$6,038

These long term disparities in funding created an accumulated deficit to the disadvantage of the historically black institutions. The funding formula employed by the Board does not, however, account for the historical disparity. Disparities in funding result from the designation of an institution as regional, urban, or comprehensive, with the latter receiving the most funds. But, as the district court stated, the three historically white institutions received the comprehensive designation in 1981. Channeling the most money to the comprehensive institutions thus perpetuated the discriminatory funding practices rebuked by this Court as de jure in 1962.[37]

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[37] *Ayers*, 674 F.Supp. at 1551.

F. *Facilities*

the district court found that the quality of an institution's facilities affects the administration of its academic programs and its attractiveness to students. From 1964-65 to 1984-85, fulltime enrollment in Mississippi's universities nearly doubled. The district court stated that Mississippi's response to this increase was inconsistent in the early years because the historically white institutions received a disproportionate share of the funds allocated for facility expansion.[38] In addition, the district court did not find any correlation between the racial identity of the institutions and the amount of campus space or the quality of the particular institutions' facilities.[39]

The district court's findings appear predicated on the testimony of the defendant's expert, who limited his analysis to the amount of space at each of the universities[40] and to the physical conditions of the facilities. The district court did not, however, determine whether the additional funds spent for facilities at the historically black institutions in recent years changed their character since the *Brown* decision in 1954 when they were considered inferior to the historically white institutions.[41]

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[38] *Id.* at 1547.

[39] *Id.* at 1561-62.

[40] *Id.* at 1548-50. The district court focused on square footage per student. *Id.* This measure, however, does not account for the quality, usefulness, efficiency, or, perhaps most importantly, the aesthetics of a structure. A large warehouse with concrete floors and tin walls may have the same square footage as the British Museum but that does not give the two facilities the same potential to pleasurably exhibit art.

[41] *Id.* at 1549.

Funds bought more in the earlier years when more money was spent for the white institutions' facilities. According to trial testimony, this funding disparity means that the space at the black institutions was not "a" generous and lacked the ambiance of the white institutions. Thus the replacement values, the cost of replacing a facility, is useful in determining whether disparities in funding currently exist between the two types of institutions. The replacement values at the historically white institutions still exceed the replacement values at the historically black institutions:

	1964-65	1984-85	1964/65-1984/85
Historically Black Institutions			
ASU	$ 10,701,096	$ 49,915,240	$ 39,214,144
JSU	12,242,349	74,315,678	62,073,329
MVSU	12,229,539	43,837,040	31,607,501
Total	35,172,984	168,067,958	132,894,974
Historically White Institutions			
DSU	$ 11,992,239	$ 63,169,993	$ 51,177,754
MSU	62,245,953	305,721,970	243,476,017
MUW	22,434,678	63,485,898	41,051,220
UM	48,405,525	199,526,432	151,120,907
USM	44,143,743	120,193,938	76,050,195
Total	189,222,138	752,098,231	562,876,093

II. THE DECISION BELOW

The scope of a state's duty to eliminate the effects of former de jure segregation in its public universities remains in question. The answer rests upon an interpretation of the Supreme Court's decision in *Green*

v. School Board of New Kent County.[42] The standard implemented by the *Green* Court places an affirmative duty on states to eliminate all of the "vestiges" or effects of de jure segregation "root and branch."[43] One line of authority has applied this standard in the university context. *Norris v. State Council of Higher Education*, 327 F.Supp. 1368 (E.D.Vir.1971) aff'd per curiam sub nom. *Board of Visitors of the College of William and Mary in Virginia v. Norris*, 404 U.S. 907, 92 S.Ct. 227, 30 L.Ed.2d 180 (1971); *Geier v. Alexander*, 801 F.2d 799 (6th Cir.1986); *U.S. Louisiana*, 692 F.Supp. 642 (E.D.La.1988); *Sanders v. Elligton*, 288 F.Supp. 937 (M.D.Tenn.1968).

In the present case, however, the district court applied a different standard based on an alternative reading of *Green*. This standard requires a state to implement, in good faith, race neutral policies and procedures[44] instead of uprooting the vestiges of segregation root and branch. The district court derived this standard from two decisions: The Supreme Court's per curiam affirmance of a three judge district court in *Alabama State Teachers Association v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D.Ala.1968), aff'd per curiam, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969) (Douglas, J., dissenting)[45] and the opinion of a five member majority in *Bazemore v. Friday*, 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986).

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[42] 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

[43] *Id.* at 438, 88 S.Ct. at 1694.

[44] *Ayers*, 674 F.Supp. at 1554.

[45] In a footnote in his dissent, Justice Douglas stated that the district court's rationale that the duty to desegregate a university system should be more narrow than the duty to

The district court in *Alabama State Teachers Association* ("*ASTA*") distinguished between higher education and secondary and elementary education.[46] The *ASTA* court reasoned that the scope of the state's duty in the face of former de jure segregation should be based on the relatively narrow good faith standard because in the area of higher education, students themselves choose where to attend college in contrast to elementary and secondary school where attendance is compulsory.[47] In the present case, the district court found support for *ASTA*'s distinction between choice in higher education and compulsory attendance in secondary and elementary education in the Supreme Court's decision in *Bazemore v. Friday*.[48]

Bazemore, in part, involved a challenge to the racial composition of the North Carolina Extension Service 4-H and Homemakers clubs. These clubs were segregated by law prior to 1965. The Court held that the existence of single race 4-H and Homemaker clubs did not violate the equal protection clause even though the clubs had a history of de jure segregation.[49] The Court reached this holding because the state had adopted a policy permitting potential members to choose which club to join in response to the Civil

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desegregate an elementary school system "is on its face an amazing statement as the forerunners of *Brown v. Board of Education*. . . . were cases involving higher education. *See Missouri ex rel. Gaines v. Canada*, . . . *Sweatt v. Painter*, . . . [and] *McLaurin v. Oklahoma State Regents for Higher Education*."

[46] *ASTA* 289 F.Supp. at 788.

[47] *Id.*

[48] 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986).

[49] *Id.* at 407-09, 106 S.Ct. at 3012-13.

Rights Act of 1964.[50] The heart of the Court's five paragraph opinion was based on a comparison to *Green*.

> *Green* . . . held that voluntary choice programs in the public schools were inadequate and that the schools must take affirmative action to integrate their student bodies. It was the effective predicate for imposing busing and pupil assignment programs to end dual school systems, but it has no application to the voluntary associations supported by the Extension Service. Even if the service in effect assigned blacks and whites to separate clubs prior to 1965, it did not do so after that time. While schoolchildren must go to school there is no compulsion to join 4-H or Homemaker Clubs; and while School Boards customarily have the power to create school attendance areas and otherwise designate the school that particular students may attend, there is no statutory or regulatory authority to deny a young person the right to join any club he or she wishes to join . . . . And however sound *Green* may have been in the context of public schools, it has no application to this wholly different milieu.[51]

Bazemore thus distinguished the compulsory attendance requirement of the elementary and secondary schools at issue in *Green* from the voluntary membership characteristic of the 4-H and Homemaker clubs. The distinction is predicated on student choice.

The district court used this distinction to analogize the choice facing the students of the public universities of Mississippi in the present case to the choice

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[50] *Id.*

[51] *Id.* at 408, 106 S.Ct. at 3013.

facing the students who wished to join 4-H and Homemaker clubs in *Bazemore*. The students in *Bazemore* could choose which 4-H or Homemaker club to join and the students in the present case could choose which Mississippi public university to attend.[52] The district court thus held that under the free choice distinction created in *ASTA* and supported by *Bazemore*, Mississippi did not violate the equal protection clause. The court reached this holding because Mississippi enacted an open admissions policy similar to the free choice policy enacted by North Carolina in *Bazemore*.

III. THE LAW

A. *The Geier Decision*

We reject the district court's reading of *Green* and adopt the interpretation applied by the Sixth Circuit in *Geier v. Alexander*.[53] The *Geier* court held that a state has an affirmative duty to eliminate all of the "vestiges" or effects of de jure segregation, root and branch, in a university setting.[54] The searching inquiry demanded by *Geier* implies that the federalism and separation of powers concerns involved in finding a state actor liable under the equal protection clause will not prevent a federal court from demanding unitary status in a public university system. This reading of *Green* punctuates our constitutional mandate to uproot the entrenched results of racial subjugation. The evolution of cases from *Plessy v. Ferguson*[55] to *Brown v. Board of Education*[56] requires no less.

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[52] *Ayers*, 674 F.Supp. at 1553.

[53] 801 F.2d 799 (6th Cir.1986).

[54] *Id.* at 804.

[55] 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

[56] *Id.* at 804.

Our endorsement of the *Geier* Court's rationale is, however, limited. The *Geier* Court, in deciding to apply *Green* in the public university forum, distinguished *Bazemore*. The Court stated that:

> While membership in 4-H and Homemaker Clubs offers a valuable experience to young people and families, particularly in rural areas, it cannot be compared to the value of an advanced education. The importance of education to the individual and the interest of the state in having its young people educated as completely as possible indicate clearly that the holding in *Green* rather than that of *Bazemore* applies. . . . Nothing in the *Bazemore* decision, where the compelling interest of a state in the education of its citizenry was not involved, requires us to reexamine these holdings [*Green* or *Geier v. University of Tennessee*] [57]

This rationale for distinguishing *Bazemore* is sound to the extent it suggests that *Bazemore* is factually distinguishable from cases involving the effects of de jure segregation in public universities. The *Bazemore* majority stated that:

> [t]he district court could find no evidence of any discrimination since that time [the time the open admissions policy was enacted] in either the services or membership and concluded as a matter of fact that any racial imbalance existing in any of the clubs was the result of wholly voluntary and unfettered choice of private individuals.[58]

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[57] *Id.* at 805; *See Green* 391 U.S. at 430, 88 S.Ct. at 1689 and *Geier v. University of Tenn.*, 597 F.2d 1056 (6th Cir. 1979).

[58] *Bazemore*, 478 U.S. at 407, 106 S.Ct. at 3012.

The outcome in *Bazemore* may thus rest on the absence of evidence of discrimination. In contrast, the record in the present case is replete with the disease. The Court in *Bazemore* only examined an arm, the 4-H and Homemakers clubs, of the body that is the North Carolina university system. This macro-view did not call the Court to the operating table although a micro-view of the case before us, which reveals that the public universities of Mississippi are infected throughout, might prompt major surgery.

We cannot, however, agree with the *Geier* rationale to the extent it suggests that potential members of 4-H and Homemaker clubs are any less stigmatized than university students by the stereotypes of racial inferiority conveyed through the effects of de jure segregation. The *Geier* court justified the holding in *Bazemore* by arguing that the state's interest in higher education outweighed the value of the experience provided by membership in 4-H and Homemaker clubs.[59] This argument, that a state's duty to eradicate the effects of de jure segregation depends on the importance that the public places on a particular activity, would require this court to create a hierarchy of values at odds with the moral choices inherent in the forerunners of *Green: McLaurin, Sweatt,* and *Brown.*[60] These cases demonstrate that law should be

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[59] *Geier,* 801 F.2d at 805.

[60] *Missouri ex rel. Gaines v. Canada,* 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208 (1938); *McLaurin v. Oklahoma State Regents for Higher Educ.,* 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149 (1950); *Sweatt v. Painter,* 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1950); *Brown,* 347 U.S. at 483, 74 S.Ct. at 686. Similarly, we disagree with the three judge district court in *United States v. Louisiana,* 692 F.Supp. 642, 656 (E.D.La. 1988) to the extent, and only to the extent, it borrowed this portion of the *Geier* analysis to distinguish *Bazemore.*

society's mirror casting reflections of individual dignity upon all.

B. *The Evolution of Plessy to Brown*

The values embodied in *Brown* provide the foundation for the searching inquiry demanded by *Green* in the public university forum. The *Brown* Court's rubric, that separate is inherently unequal, symbolizes the need for a rule of law to serve as a moral ambition in a society fraught with discrimination. *Brown,* however, cannot be understood in isolation. A visit with its ancestors, *Plessy v. Ferguson, Missouri ex rel. Gaines v. Canada, Sweatt v. Painter,* and *McLaurin v. Oklahoma* is necessary.[61]

Plessy was an action brought by a black man desiring to sit in a railway car designated for whites only under Louisiana law. The Court held that Louisiana's racially segregative law did not violate the fourteenth amendment.[62] In response to Mr. Plessy's argument, that separate facilities stamped him with a badge of racial inferiority, the Court stated:

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act but solely because the colored race chooses to put that construction upon it. . . . The

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[61] *Plessy,* 163 U.S. at 537, 16 S.Ct. at 1138; *Missouri ex rel. Gaines,* 305 U.S. at 337, 59 S.Ct. at 233; *Sweatt,* 339 U.S. at 629, 70 S.Ct. 848; *McLaurin,* 339 U.S. at 637, 70 S.Ct. at 851.

[62] *Plessy,* 163 U.S. at 550, 16 S.Ct. at 1143.

argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. . . . *Legislation is powerless to eradicate racial instincts.*[63]

Plessy is clearly at odds with the history surrounding the fourteenth amendment.

> The defeat of the South in the Civil War brought forth the Second Revolution in America's history, a turbulent era referred to as Reconstruction. Black participation in Southern public life after 1867 was the most radical development of the Reconstruction years, *a massive experiment in interracial democracy* without precedent in the history of this or any other country that abolished slavery in the nineteenth century. . . . *The transformation of slaves into* free laborers and *equal citizens* was the most dramatic example of the social and political changes unleashed by the Civil War and emancipation. . . . Reconstruction was not merely a specific time period, but the beginning of an extended historical process: *the adjustment of American society to the end of slavery.*[64]

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[63] *Id.* at 551, 16 S.Ct. at 1143 (emphasis added).

[64] E. Foner, *Reconstruction—America's Unfinished Revolution 1864-1877* xxv-xxvii (1988) (emphasis added).

The Civil War altered the mores of our country. Blacks were to be equal to whites. The fourteenth amendment, enacted one year later, was the embodiment of this idea of equality clothing blacks, for the first time, with the fabric of the Constitution.

The *Plessy* Court abandoned its constitutional duty to influence the folkways of the South to comport with the mores now enshrined in the fourteenth amendment; mores irreconcilable with the separate but equal rule announced by the Court. This rule reinforced the social stigmatization of blacks with racial separation by force of law. Stereotypes of racial inferiority were perpetuated by galvanizing instead of transforming the perception that whites are superior. The Court stated that it was the perceptions of blacks that created any badges of inferiority when in fact it was Mr. Plessy who was imploring the Court to bridle the racial beliefs of the white majority that he so painfully endured.

Plessy is thus a decision that maintains the status quo perceptions of a prejudiced society. The Court failed to begin to bring these perceptions in line with the message of the Civil War that blacks were equal to whites. The constitutional rights of the minority did not animate the Court's analysis.

The constitutional rights of blacks began to expand in part through the notion that discrimination law should serve as a symbol to influence majority values. *Missouri ex rel. Gaines v. Canada.*[65] In *Gaines*, the University of Missouri School of Law denied Lloyd Gaines, the plaintiff, admission because he was black. The University informed him that he could attend another institution in an adjacent state at Missouri's

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[65] 305 U.S. 337, 59 S.Ct. 232.

expense. Instead, Gaines sued the state for admission.

The Supreme Court held that Gaines had to be admitted to the School of Law. The Court reasoned that:

> The basic consideration is not as to what sort of opportunities, other States provide, or whether they are as good as those in Missouri, but as to what opportunities Missouri itself furnishes to white students and denies to negroes solely upon the ground of color . . . . [I]t would nevertheless be the constitutional duty of Missouri when it supplied such courses [in legal education] for white students to make equivalent provision for negroes . . . . [T]he essence of a constitutional right is that it is a personal one. It is the individual who is entitled to the equal protection of the laws.[66]

The *Gaines* rationale differs significantly from the reasoning of *Plessy*. In *Gaines*, the Court placed an affirmative duty on the state to redress the constitutional rights of a black student. The Court considered these rights personal to the individual. Unlike the Court in *Plessy*, the analysis of the *Gaines* Court was thus animated by a concern for minority rights. This analysis suggests, moreover, that segregation law was beginning to empathize with the perceptions of blacks.

The eradication of the separate but equal doctrine, initiated by the *Gaines* Court, continued in two other cases involving university education, *Sweatt v. Painter*,[67] and *McLaurin v. Oklahoma State Regents*

[66] *Missouri ex rel. Gaines*, 305 U.S. at 349, 59 S.Ct. at 232.

[67] *Sweatt*, 339 U.S. at 629, 70 S.Ct. at 848.

for Higher Education.[68] The question presented in both cases was: "[t]o what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university?[69]

In *Sweatt*, the University of Texas School of Law denied admission to a prospective law student because he was black.[70] He sued the University and won admission.[71] In response, the University created a law school for black students in the basement of a state office building.[72] The black law school had a "faculty of five full time professors; a student body of 23; a library of some 16,500 volumes serviced by a full time staff; a practice court and a legal aid association; and one alumnus who ha[d] become a member of the Texas bar."[73]

The trial court found that the school offered "privileges, advantages and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas."[74] The Supreme Court, however, rejected these findings. The Court stated that:

> we cannot find substantial equality in the educational opportunities offered white and Negro law

[68] *McLaurin*, 339 U.S. at 637, 70 S.Ct. at 851.

[69] *Sweatt*, 339 U.S. at 631, 70 S.Ct. at 849.

[70] *Id.*

[71] *Id.* at 631-32, 70 S.Ct. at 849.

[72] *Id.* at 632, 70 S.Ct. at 849.

[73] *Id.* at 633, 70 S.Ct. at 850.

[74] *Id.* at 632, 70 S.Ct. at 849.

> students by the state . . . . With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School . . . . It is fundamental that these cases [addressing race distinctions in graduate education] concern rights which are personal and present.[75]

McLaurin was decided the same day as *Gaines*. G.W. McLaurin, a black student, applied to the University of Oklahoma to obtain a doctorate in education.[76] The University prohibited McLaurin from enrolling due to an Oklahoma statute forbidding the operation of a school attended by both blacks and whites.[77]

McLaurin sued the University for admission.[78] In response, the Oklahoma legislature amended the statute to admit black students under the condition that instruction "shall be given at such colleges or institutions of higher education upon a segregated basis." [79] Although the University admitted McLaurin under this amendment, he was

> required to sit apart at a designated desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, but not to use the desks in the regular reading room; and to sit at a designated table

[75] *Id.* at 634-35, 70 S.Ct. at 850-51.

[76] *McLaurin*, 339 U.S. at 638, 70 S.Ct. at 852.

[77] *Id.*

[78] *Id.*

[79] *Id.*

> and to eat at a different time from the other students in the school cafeteria.[80]

The three judge district court held that this treatment did not violate McLaurin's right to the equal protection of the laws.[81] The Supreme Court reversed. The Court reasoned that:

> [The restrictions] signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession. . . . There is a vast difference—a Constitutional difference—between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar. . . . [T]he removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very

[80] *Id.* at 640, 70 S.Ct. at 853. The University altered the conditions under which Mr. McLaurin attended school in the interval between the decision of the district court and the oral argument in the Supreme Court. The "section of the classroom in which appellant sat was surrounded by a rail on which there was a sign stating, 'Reserved for Colored,' but these have been removed. [At the time of oral argument, McLaurin was] assigned to a seat in the classroom in a row specified for colored students; he [was] assigned to a table in the library on the main floor; and he [was] permitted to eat at the same time in the cafeteria as other students, although here again he [was] assigned to a special table." *Id.*

[81] *Id.*

> least, the state will not be depriving appellant [McLaurin] of the opportunity to secure acceptance by his fellow students on his own merits. . . . We conclude that the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws.[82]

The operative ideas in *Gaines* were brought to fruition by *Sweatt* and *McLaurin*. The rights of a black individual seeking admission to a white university labeled personal by the *Gaines* Court were considered the rights of a "significant and other segment of society" in *Sweatt*.[83] The *Sweatt* Court thus heeded the message of the Civil War by recognizing the rights of the black minority in their entirety. The implication is that blacks were entitled to complete participation in community life.

McLaurin developed a critical aspect of this idea by focusing on the intellectual experience of the black student. The Court stated that: "Such restrictions [i.e., the ones isolating McLaurin from the rest of the student body] impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."[84] Minority perceptions were at issue reflecting the Court's understanding that the majoritarian regime of separate but equal inflicted messages of inferiority. The reasoning of *McLaurin* thus differs from the reasoning of *Plessy* where the Court, condoning the status quo folkways of the white major-

[82] *Id.*

[83] *Sweatt*, 339 U.S. at 634, 70 S.Ct. at 850.

[84] *McLaurin*, 339 U.S. at 641, 70 S.Ct. at 853.

ity, stated that blacks imposed badges of inferiority upon themselves.

The *McLaurin* Court's most significant recognition, however, is the possibility of using equal protection doctrine to influence these folkways to correspond with the message of equality wrought by the Civil War. This possibility evolved from the duty placed on the state by the *Gaines* Court to redress minority rights. The Court in *McLaurin* stated that: "[t]he removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the state will not be depriving appellant [McLaurin] of the opportunity to secure acceptance by his fellow students on his own merits."[85] *McLaurin* thus recognized that constitutional doctrine might alter societal values unlike the *Plessy* decision which maintained them. In effect, *Plessy* was dead. The Court in *Brown* was now free to etch a tombstone for the grave of separate but equal dug by *Gaines*, *Sweatt*, and *McLaurin*.

Brown transformed the *McLaurin* Court's suggestion, that equal protection doctrine might alter the perceptions of the white majority, into a constitutional mandate. In contrast to the Court in *McLaurin*, the *Brown* Court explicitly recognized that legal segregation caused black students to perceive themselves as inferior: "to separate them [the students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be un-

[85] *Id.* at 641-42, 70 S.Ct. at 853-54.

done."[86] The message was that constitutional doctrine must commandeer a social mission to eradicate the stigma conveyed through racial separation by law. The stigma could be eradicated if the decisions of courts removed the legal barriers supporting racial subjugation thereby serving as moral messages to a white majority permeated with discriminatory values. The separate is inherently unequal rule announced by the Court thus reflects disdain towards the source of the perceptions of black inferiority.

The discussion of remedies in *Brown II*[87] illuminates the scope of the rights created in *Brown I*. The Court in *Brown II* stated that:

> In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Historically, equity has been characterized by practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public

[86] Charles Sumner made a similar argument in 1850 that failed to carry the day. In *Brown*, Chief Justice Warren attributed the phrase "separate but equal" in *Plessy* to a Massachusetts case that involved segregated schools in Boston, Massachusetts. *Roberts v. City of Boston*, 59 Mass. 198, 5 Cush. 198 (1850). In *Roberts*, Charles Sumner advocated the cause of five year old Sara Roberts before the Massachusetts Supreme Court, over ten years before the Civil War, arguing that Boston's segregation of black children branded them with a stigma of inferiority. *Roberts*, 59 Mass. at 203-04. In addition, Sumner argued that segregation injured white school children because their "hearts, while yet tender with childhood, are necessarily hardened by this conduct, and their subsequent lives, perhaps, bear enduring testimony to this legalized uncharitableness." *See* R. Kluger, *Simple Justice* 75-77 (1977).

[87] *Brown v. Board of Educ.*, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955) (*Brown II*).

> and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a non-discriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth . . . . [in *Brown I*]. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.[88]

The remedy in *Brown II* was derived from the personal interest of the student. *Brown I* held that the personal interest of the student was based on perceptions of racial inferiority conveyed through the effects of racial separation by law. The remedy, the Court in *Brown II* held, must therefore remove all the effects of de jure segregation. Otherwise, the perceptions of black students would remain distorted and the moral aspirations of "separate is inherently unequal"—the attainment of human dignity for all—

[88] *Id.* at 300, 75 S.Ct. at 756. "To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." *Id.* at 300-01, 75 S.Ct. at 756-57.

would be impugned. This aspiration is why public disagreement, the disagreement of those pleased by the status quo, was not an obstacle to the *Brown II* Court.

C. *Green*

The holding in *Green* [89] cannot be understood without considering *Brown I* and *Brown II*. The *Green* Court held that a state has an affirmative duty to create a unitary school system by eliminating, root and branch, the effects of de jure discrimination.[90] The Court stated that:

> The pattern of separate "white and Negro" schools . . . established under compulsion of state laws is precisely the pattern of segregation to which *Brown I* and *Brown II* were particularly addressed. . . . It is of course true that for the time immediately after *Brown II* the concern was with making an initial break in a long-established pattern excluding Negro children from schools attended by white children. The principle focus was on obtaining for those Negro children courageous enough to break with tradition a place in the "white" schools. . . . Under *Brown II* that immediate goal was only the first step, however. *The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about. . . .*[91]

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[89] *Green*, 391 U.S. at 430, 88 S.Ct. at 1690.

[90] *Id.* at 437-38, 88 S.Ct. at 1693-94.

[91] *Id.* at 435-36, 88 S.Ct. at 1692-93. *See also Dayton Board of Educ. v. Brinkman*, 443 U.S. 526, 537, 99 S.Ct. 2971, 2979, 61 L.Ed.2d 720 (1979) ("Given intentionally segregated schools in 1954, however, the Court of Appeals was quite right in holding that the Board was thereafter under a continuing duty to eradicate the effects of that system. . . ."); *Columbus Board of Educ. v. Penick*, 443 U.S. 449, 460, 99 S.Ct. 2941, 2948, 61 L.Ed.2d 666 (1979) ("The Board's continuing affirmative duty to disestablish the dual system is therefore beyond question."); *Milliken v. Bradley*, 433 U.S. 267, 289-90, 97 S.Ct. 2749, 2761-62, 53 L.Ed.2d 745 (1977) ("More precisely, the burden of state officials is that set forth in *Swann* [*v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971)]—to take the necessary steps to 'eliminate from the public schools all vestiges of state-imposed segregation.'"); *Keyes v. School Dist. No. I, Denver, Colo.*, 413 U.S. 189, 200, 93 S.Ct. 2686, 2693, 37 L.Ed.2d 548 (1973) ("Rather, we have held that where plaintiffs prove that a current condition of segregated schools exists within a school district where a dual system was compelled or authorized by statute at the time of our decision in *Brown* . . . the State automatically assumes an affirmative duty to 'effectuate a transition to a racially nondiscriminatory school system. . . .'") (citing *Brown I*, 347 U.S. at 483, 74 S.Ct. at 686); *Alexander v. Holmes County Board of Educ.*, 396 U.S. 19, 20, 90 S.Ct. 29, 29, 24 L.Ed.2d 19 (1969) (*per curiam*) ("Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.").

Under *Green* the creation of a unitary school system is the goal, a goal tantamount to the elimination of the effects of de jure discrimination, root and branch. If a less demanding standard was adopted, images of inferiority would be memorialized with the force of law, contrary to the vision of *Brown*, because vestiges of discrimination would remain unaddressed. *Brown* commands the application of *Green* in all of its fertility to the public university forum.

By comparison, the district court's application of *Green* was circumscribed. According to the district court, a state discharges its constitutional responsibility by implementing in good faith, race-neutral poli-

cies and procedures.[92] The district court held that the open admissions policy of Mississippi's public universities satisfied this standard.[93]

The district court reasoned that students themselves choose what college to attend under an open admission policy in contrast to elementary and secondary schools where attendance is compulsory.[94] This distinction, sustained by *Bazemore*, is based on student choice, or conversely, that students are not compelled to attend college. It assumes that black students possess the same freedom to choose as do white students. Contrary to *Brown*, however, this assumption ignores the effects of past de jure segregation.

The remedial power granted to district courts by *Green* flows from the concept of stigmatization explicated in *Brown*. *Brown* explicitly recognized that vestiges of de jure segregation distort the perceptions of blacks. Blacks do not, therefore, make choices from a tabula rasa. Instead, they choose against a history of racial subjugation with its attendant messages of inferiority. Freedom of choice is not a panacea:

> [t]here is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. . . . We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom of choice" plan might of itself be unconstitutional, although that argument has been

[92] *Ayers*, 674 F.Supp. at 1551-54.

[93] *Id.*

[94] *Id.* at 1552-53.

> urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself.[95]

The district court in the present case and the five member majority in *Bazemore* may also be understood to mean that the searching inquiry of *Green* applies only if attendance at a particular institution is legally compelled unlike public universities or 4-H and Homemaker clubs. This view of choice, however, is also contrary to *Brown*. *Brown* stated that the stigmatizing effects of segregation are not created by legally compelled attendance but rather from the vestiges of legally compelled separation. Thus the lesson of *Brown* is that the malignancy of apartheid does not vanish in state-sponsored forums simply because attendance is voluntary and admittance race-neutral. Courts must not become anesthetized from gazing too deeply into what some believe is the platonic vision of *Bazemore*. *Bazemore's* vision of a state government is one resurrected from a past marred by racial subjugation without the ashes of its fire-laden history to gray the facade. Unforunately, this vision rests on the blithe assumption that the moral ambition of *Brown* has been conquered; an egalitarian society where the elixir is choice blended into a grog of neutral admissions policies.

The most abhorrent implication of the idea that the effects of segregation may vary with the admissions and attendance policies of an institution, however, is that black citizens are demeaned with the quality of chameleons. The color of their skin is presumed to change with the structure of an institution where they will see the world as do whites. Thus, any stigmatiza-

[95] *Green*, 391 U.S. at 439, 88 S.Ct. at 1694.

tion that flows from the racial identity of the institutions could only come from the thinking of blacks themselves because they are assumed to be able to self-desegregate. To this extent, *Plessy* is resurrected. The *Plessy* Court stated that:

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. *If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.*[96]

Unfortunately, racial prejudice in our society has not so receded. Even if unintended, it flows from a chronicle of subjugation once encouraged by the rule of our law.

These ruminations, however, should not be troubling. The monocular vision of *Bazemore* does not give cause. For history will not let us arrogate the power to do overtly, what we are confident *Bazemore* did not do covertly, overrule *Brown*, *Green*, and a long line of equal protection cases. If these cases are to die, they at least deserve the dignity of a burial.

IV. DISCUSSION

The defendants have not satisfied their affirmative duty under *Green*. *Green* demands the removal of all vestiges of de jure segregation root and branch. The facts in this case, however, demonstrate that roots are spread all over the terrain and that branches create shadows over areas where *Brown* was supposed to

[96] *Plessy*, 163 U.S. at 551, 16 S.Ct. at 1143 (emphasis added).

usher in rays of sunshine. The badge of inferiority that marks black institutions has not been removed. As such, there remains in Mississippi's higher educational system vestiges of discrimination which distort the perceptions of black students. The racial composition of the student body is not simply the result of student choice.

As the district court stated, the Board adopted the minimum ACT requirement in 1962 precisely because of its adverse effects on blacks.[97] This requirement, presently a 15 for automatic admission to a historically white university, continues to impede most blacks.[98] In 1986, only 3 out of 10 black students scored 15 or higher on the ACT. The district court's rationale, educational reasonableness is not a justification. More accurate, less discriminatory means to predict the college performance of blacks exist. Yet Mississippi does not consider high school grades and other noncognitive data in assessing the applications of minority candidates despite the recommendation of the American College Testing program to the contrary.

The ACT exception for special talents or high risk students, which is more liberal at the historically black institutions, exacerbates the discriminatory effect of the minimum ACT score. The reputation of these institutions as inferior is enhanced because admissions

[97] *Ayers*, 674 F.Supp. at 1555.

[98] Mississippi's ACT policy could discourage potential black students from applying to the historically white universities. *Cf. Dothard v. Rawlinson*, 433 U.S. 321, 330, 97 S.Ct. 2720, 2727, 53 L.Ed.2d 786 (1977) ("The application process might itself not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory.").

qualifications are not as demanding. The exceptions thus perpetuate segregation to the extent that it is easier for blacks to be admitted to a black school. The integration of the historically white universities is not invited. In fact, we question the extent to which the historically white universities publicize the availability of the exceptions.[99]

The racial composition of the faculty and administration of the historically white institutions also has a pernicious effect on the perceptions of blacks. The paucity of blacks on the faculty and administration of the white comprehensive universities allows few black role models at what are considered the superior institutions. Instead, black faculty and administrators are more numerous at the black universities which are perceived as relatively inferior.

The Plan purportedly accounted for the limited supply of black faculty and administrators. By 1986, however, Delta State University, a historically white institution, had the largest percentage of black faculty with five percent. In addition, Alcorn State University and Mississippi Valley State University, historically black institutions, had the smallest percentages of black faculty with doctorates. The Board might have raised the salaries of black faculty and administrators to attract them from the limited pool.

The academic offerings of the various institutions demonstrates that vestiges of de jure discrimination remain entrenched throughout Mississippi's public universities. As of 1986, Alcorn State University and Mississippi Valley State University, historically black, were two of the three institutions ranking lowest in total programs offered and in number of new pro-

[99] *See supra* note 12.

grams approved by the Board. And, Jackson State University, the black institution with the regional designation, continues to offer fewer courses than any of the white comprehensive universities. As offerings diminish, however, universities are less likely to develop diverse student bodies or unique reputations.

The duplication of non-essential courses[100] compounds the problem. The historically white institutions offer a significant number of the undergraduate and masters-level courses offered by the black institutions. This duplication fosters the continued racial identity of the universities to the extent that students may attend either a black or a white institution.

The historically white universities' placement of branch centers near historically black universities also contributed to the racial identity of the institutions. The branches were a part of Mississippi's de jure plan as of 1962.[101] Their impact is apparent at least through 1981 when the Mississippi University Center offered 76% of the bachelors degree programs and 90% of the masters degree programs offered by Jackson State University. The Natchez Center offered 20% of the bachelors degree programs and 66% of the masters degree programs offered by Alcorn State University in the same year. The centers thus reinforced the racial identity of Jackson State University and Alcorn State University over the 1962-1981 period and probably the current composition of their student bodies.

Until 1962, the Board also maintained a racially segregated university system by underfunding the

[100] *See supra* note 25.

[101] *Ayers*, 674 F.Supp. at 1551.

historically black institutions.[102] Over time, funding disparities produced an accumulated deficit to the disadvantage of the historically black institutions. The Board's funding formula does not account for this historical deficit. Similar disparities exist in the funding of the physical plants. The Board implicitly endorsed all of these funding practices by implementing the mission designations in 1981.

The mission designations placed an ostensibly neutral label on each institution. In reality, however, these labels, comprehensive, urban, and regional, served to officially condone the Board's discriminatory funding practices. The white comprehensive universities received the most funding and offered the most courses before the Board implemented the designations in 1981.[103] The designations, based on the resources existing in 1981, were thus objective labels for past discriminatory practices. Perceptions of inferiority were perpetuated under the fiction of educational reasonableness. The heirarchy of the mission designations, with the three historically white institutions labeled comprehensive, reinforced the image of the white schools as the superior institutions of the state.

Vestiges of de jure segregation permeate the public university system of Mississippi. Admissions policies, the racial composition of the faculty and administration, funding practices, academic offerings, and mission designations all perpetuate a stigma of inferiority. Contrary to the mandates of *Brown* and *Green*, a unitary system has not been achieved.

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[102] *Id.*

[103] *Id.*

V. TITLE VI OF THE CICIL RIGHTS ACT

In addition to their equal protection claim the plaintiffs' [104] claim relief under Title VI of the Civil Rights Act of 1964 [105] and its implementing regulations.[106] Section 601 of Title VI states, in pertinent part, that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." [107] In essence, Title VI prohibits discrimination that violates the equal protection clause of the fourteenth amendment.[108] At trial, the plaintiffs did not succeed with their Title VI claim because the district court held that the defendants did not breach their affirmative duty under *Green*.

We disagree. The plaintiffs established an equal protection claim. The remaining question is thus whether there has been any discrimination, in the words of Title VI, "under any program or activity receiving federal financial assistance." [109] The quoted

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[104] The United States intervened under 42 U.S.C. section 2000h-2 (1989) three months after the private plaintiffs filed their complaint against the state of Mississippi. This provision entitles the United States to the relief that it would have obtained if it had initiated the action.

[105] 42 U.S.C. section 2000d et seq. (amended Oct. 21, 1986, Pub.L. 99-506, Title X, section 1003, 100 Stat. 1845; Mar. 22, 1988, Pub.L. 100-259, Title VI, section 606, 102 Stat. 31).

[106] 34 C.F.R. sections 100.1-100.13 (1988).

[107] 42 U.S.C. section 2000d (1981).

[108] *Ayers*, 674 F.Supp. at 1551 n. 7.

[109] 42 U.S.C. section 2000d-4a (1989) (entitled " 'Program or activity' defined"). We do not have to decide whether the

phrase was the subject of the Supreme Court's decision in *Grove City College v. Bell.*[110]

The Court in *Grove City* held that Title VI liability is established only with evidence that discrimination occurred in a program or activity specifically supported by federal funds.[111] If a college received federal money in the area of student loans, for example, Title VI could not be used to prevent discrimination in the area of student admissions. Institution-wide discrimination is thus not actionable under *Grove City* when federal financing is program specific. The result in *Grove City* was based on Congressional intent.[112]

Congressional enactments are often mute regarding important questions of statutory interpretation. When Congress decides to speak clearly, however, we must listen with our ears sharply attuned. On March 22, 1988, Congress overrode the President's veto of

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plaintiff's must prove discriminatory intent instead of discriminatory impact. *Alexander v. Choate,* 469 U.S. 287, 293, 105 S.Ct. 712, 716, 83 L.Ed.2d 661 (1985) (Title VI itself reaches only instances of intentional discrimination although the implementing regulations could allow a disparate impact analysis). *Cf. Guardians Ass'n v. Civil Service Comm'n of the City of N.Y.,* 463 U.S. 582, 607, n. 27, 103 S.Ct. 3221, 3235, n. 27, 77 L.Ed.2d 866 (1983) (Proof of intentional discrimination is necessary for the recovery of compensatory damages although only proof of discriminatory impact is necessary in a suit to enforce the regulations adopted under Title VI.). Our case involves past intentional discrimination continuing to the present through a breach of the affirmative duty placed on the state by *Green.*

[110] 465 U.S. 555, 104 S.Ct. 1211, 79 L.Ed.2d 516 (1984).

[111] *Id.* at 570-76, 104 S.Ct. at 1219-23.

[112] *Id.* at 563-70, 104 S.Ct. at 1216-19.

the Civil Rights Restoration Act of 1987.[113] In effect, Congress shouted across the park to the Supreme Court: "You misunderstood our intention. We want the term 'program or activity' to mean the whole university, not just the student loan program."

Originally, in the 1964 Civil Rights Act, Congress did not define the term "program or activity." The *Grove City* Court's narrow reading of this crucial term, however, moved Congress to reinflate it with the Civil Rights Restoration Act of 1987.[114] The Act states, in pertinent part, that "[f]or purposes of this subchapter, the term 'program or activity' and the term 'program' mean all of the operations of a college, university, or other postsecondary institution, or public system of higher education. . . ." [115]

This section means that it is possible to establish institution-wide discrimination under Title VI when there is federal financing that is program specific. In this sense, the term "program or activity" encompasses the entire college or university. The present case, however, was tried after the 1984 *Grove City* decision but before Congress acted in 1988. It must therefore be determined whether *Grove City* controls the outcome of this case or whether the legislation applies retroactively.

Retroactive application of a statute is appropriate when Congress enacts the statute to clarify the Supreme Court's interpretation of previous legislation thereby returning the law to its previous posture.[116]

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[113] Pub.L. 100-259, 102 Stat. 28, 42 U.S.C. section 2000d-4a (1988).

[114] 42 U.S.C. section 2000d-4a(2)(A) (1988).

[115] *Id.*

[116] *See Bonner v. Arizona Dept. of Corrections,* 714 F.Supp. 420, 422 (D.Ariz.1989) (Civil Rights Restoration Act of 1987

This rule flows from two of the Supreme Court's canons of statutory construction. First, subsequent legislation declaring the intent of an earlier statute is entitled to great weight.[117] The Civil Rights Restoration Act was specifically enacted to clarify the *Grove City* Court's reading of the term "program or activity" in the Civil Rights Act of 1964. The Senate report accompanying the passage of the Act[118] states that the bill was introduced:

> to overturn the Supreme Court's 1984 decision in *Grove City College v. Bell*. . . . The legislative history of the statutes in question shows Con-

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applies retroactively); *United States v. Berg*, 710 F.Supp. 438, 442 (E.D.N.Y.1989) ("[W]here Congress clearly indicates its intention to reject a recent Supreme Court interpretation and restore the law to its former state, retroactive application of a newly enacted statute is appropriate."); *Leake v. Long Island Jewish Medical Center*, 695 F.Supp. 1414, 1417-18 (E.D.N.Y.1988) (Terms "program or activity" in the Civil Rights Restoration Act of 1987 apply retroactively) aff'd, 869 F.2d 130 (2nd Cir.1989); *Mrs. W. v. Tirozzi*, 832 F.2d 748, 755 (2nd Cir.1987) ("The 1986 amendment in the present case [the Handicapped Children's Protection Act of 1986] simply codifies a congressional purpose long in place which Congress believed the Supreme Court had misinterpreted" so the plaintiffs could bring suit under the Act even though the Act was passed one year after the suit was brought).

[117] *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 380-81, n. 6, 89 S.Ct. 1794, 1801-82, n. 6, 23 L.Ed.2d 371, n. 6 (1969); *Glidden v. Zdanok*, 370 U.S. 530, 541, 82 S.Ct. 1459, 1468, 8 L.Ed.2d 671 (1962) (opinion of Mr. Justice Harlan, joined by Mr. Justice Brennan and Mr. Justice Stewart); *Federal Housing Admin. v. Darlington Inc.*, 358 U.S. 84, 90, 79 S.Ct. 141, 145, 3 L.Ed.2d 132 (1958).

[118] There was no house report.

> gress intended institution-wide coverage. . . . In enacting the four civil rights statutes, Congress intended that each be broadly interpreted to provide effective remedies against discrimination. . . . Contrary to the view of the Supreme Court that the language common to these statutes [i.e. 'program or activity'] should be given limited interpretation, Congress intended institution-wide coverage and the executive branch has historically insisted upon this view. It was understood at the outset that the task of eliminating discrimination from institutions which receive federal financial assistance could only be accomplished if the civil rights statutes were given the broadest interpretation.[119]

Second, the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong.[120] In the Civil Rights Restoration Act of 1987 itself, Congress stated that:

> certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of . . .

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[119] S.Rep. No. 100-64, 100th Cong., 2d Sess. 2-5, reprinted in 1988 U.S. Code Cong. & Admin.News 3-7 (bill introduced "to overturn the Supreme Court's 1984 decision in *Grove City College v. Bell* . . . and to restore the effectiveness and vitality of the four major civil rights statutes that prohibit discrimination in federally assisted programs.").

[120] *N.L.R.B. Hendricks County*, 454 U.S. 170, 177, 102 S.Ct. 216, 222, 70 L.Ed.2d 323 (1981); *N.L.R.B. v. Bell Aerospace*, 416 U.S. 267, 274-75, 94 S.Ct. 1757, 1761-62, 40 L.Ed.2d 134 (1974); *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 381, S.Ct. 1794, 1801, 23 L.Ed.2d 371 (1969); *Udall v. Tallman*, 380 U.S. 1, 16, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965).

> Title VI of the Civil Rights Act of 1964 and legislative action is necessary to restore the prior consistent and longstanding *executive branch interpretation* and broad, institution-wide application of those law as previously administered.

The Senate Report and the statements surrounding the passage of the Act thus indicate that Congress intended to clarify the effect of the *Grove City* decision and restore the previous understanding of the words "program or activity" crucial to the efficacy of the civil rights statutes.[121] The Civil Rights Restoration Act of 1987 operates retroactively.

The district court found that Mississippi's public universities receive federal financial assistance. In addition, we stated that Mississippi violated the equal protection clause by breaching its affirmative duty under *Brown* and *Green*. The plaintiffs have therefore established a claim under Title VI.

VI. A GUIDEPOST ON REMAND

The Chinese have said that a thousand mile journey starts with one step. During the twelve year history of this case, there were many steps, but no discernable degrees of progress on the road towards unitary status. Unfortunately, this case lingered, loitered, and lulled for more than a decade.

The fourteenth amendment does not purport to address all areas of life and living. It does, however, set a goal fundamental to the maintenance of a truly democratic society—the removal of racial stigma. Thus even if the roots of prejudice and the effects of segregation run deep, progress is crucial to assure equality for all.

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[121] In addition, Public Law 100-259 does not have an effective date, this is unusual.

Freedom of choice is a step, and only that, on the road to this goal. And in Mississippi, although choice is neither spurious nor specious, desegregation is not being achieved. In this regard, the prophecy of *Brown*, the pragmatism of *Meredith*, the fertility of *Green*, and the hesitation of *Bazemore* are instructive. These cases affirm that true freedom of choice remains real and corporeal. One is reminded of the remark attributed to President Truman, "If it works, don't fix it." The converse, however, is axiomatic, if it does not work, fix it or abandon it.

But before a unitary status award is made, or even a medal for that honor cast, the court should have the assistance of other disciplines. Psychologists, sociologists, economists, engineers, doctors, and professionals from all relevant areas of learning play a role. Windows must open to ventilate the court room with ideas from the winds of truth. To this end, testimony, depositions, cross examinations and opinions can assist. Only then should the parties come forth with a definite plan for the achievement of unitary status.

The road to unitary status will not be impassable, but it cannot be negotiated without sacrifice and expenditure of treasure. In this case, however, remember that we have not even seen the road signs for the exit to impossibility. We do not ask that justice be done even though the heavens may fall. But if the stigmatizing effects of desegregation are to be vanquished, even if only in increments, the improvement must be continual. No cessation is permissible until the mandate of *Brown* is satisfied. *Brown* prescribed some hesitation as to time, but no hesitation as to result.

Thus if a diminution of what some might label meritocracy occurs, it cannot excuse loyalty to the

nineteenth century ideal signified by the abolition of slavery. We do not want to make a mockery of the rally cry of the 1960's "we shall overcome" as the twenty first century approaches. For only when this hope is realized may the jurisdiction of the federal courts truly be relinquished.

These words should serve to illuminate the road map that the district court must create to remedy the violation of the equal protection clause in this case. They give hope that any sortie on remand will not be long or bitterly fought. We have held that *Brown* and *Green* place an affirmative duty on the state to eliminate all of the vestiges of segregation, root and branch, in the public university forum. Neither this duty nor the command of Title VI has been met. We thus reverse and remand for proceedings not inconsistent with this opinion.

REVERSED AND REMANDED

DUHÉ, Circuit Judge, Dissenting:

Despite the well-crafted reasoning and artful prose employed by the majority, I find myself in basic disagreement.

In my view, our decision is controlled by the clear teaching of the Supreme Court in *Bazemore v. Friday*, 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986), and *Alabama State Teachers' Association v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D.Ala.1968), *aff'd per curiam*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969). These cases teach that, where attendance choices are voluntarily made, our Constitution requires that a state discontinue prior discriminatory practices and adopt wholly race-neutral criteria for making the decisions necessary to administer and operate the system. The

majority, relying on district and other circuit court decisions, has categorically rejected that teaching and imposed upon the state the same constitutional duty required for primary and secondary education where freedom of choice is unavailable and services are free of charge. In so doing it takes a liberty that is simply not available to courts of appeals.

The majority has ably distilled the essence of *Brown I* and *II*, concluding that "[C]onstitutional doctrine must commandeer a social mission to eradicate the stigma conveyed through racial separation by law." At 749. Yet if the social mission itself is not at issue in this case, the reach of that mission most certainly is. Under current law the mission to eliminate all vestiges of de jure discrimination "root and branch" does not reach the university. If it is contrary to *Brown* to assume that black students possess the same freedom to choose as white students, as the majority states, a court of appeals is not thereby entitled to circumvent a contrary decision of the Supreme Court which flatly and squarely relies on a student's freedom to choose. Moreover, the majority seeks to extend *Green* on the very basis—freedom to choose—that the *Bazemore* Court declined to extend it. *Bazemore* simply cannot be distinguished on the basis that the record in this case is "replete with the disease [of discrimination];" such analysis merely puts the evidence ahead of the standard.

Until the Supreme Court teaches otherwise we are bound by its existing pronouncements. The reasons why the rule of *Bazemore* and *Alabama* is appropriate in the higher education setting where one has freedom of choice and must bear the cost of that choice are fully explored in those opinions so are not repeated here. I fully subscribe to those reasons. I respectfully dissent.

APPENDIX C

UNITED STATES DISTRICT COURT
N.D. MISSISSIPPI
GREENVILLE DIVISION

No. GC75-9-NR

JAKE AYERS, SR., ET AL., PLAINTIFFS,

UNITED STATES OF AMERICA,
PLAINTIFF-INTERVENOR,

v.

WILLIAM ALLAIN, GOVERNOR, STATE OF MISSISSIPPI; W. RAY CLEERE, COMMISSIONER OF HIGHER EDUCATION; BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING, BETTY A. WILLIAMS, PRESIDENT, THOMAS D. BOURDEAUX, VICE PRESIDENT, WILLIAM H. AUSTIN, JR., FRANK O. CROSTHWAIT, JR., BRYCE GRIFFIS, WILL A. HICKMAN, CHARLES C. JACOBS, JR., WILLIAM M. JONES, JOHN R. LOVELACE, M.D., DIANE MILLER, DENTON ROGERS, JR., SIDNEY L. RUSHING, GEORGE T. WATSON, MEMBERS; DELTA STATE UNIVERSITY, KENT WYATT, PRESIDENT; MISSISSIPPI STATE UNIVERSITY, DONALD W. ZACHARIAS, PRESIDENT; MISSISSIPPI UNIVERSITY FOR WOMEN, JAMES W. STROBEL, PRESIDENT; UNIVERSITY OF MISSISSIPPI, R. GERALD TURNER, CHANCELLOR; UNIVERSITY OF SOUTHERN MISSISSIPPI, AUBREY K. LUCAS, PRESIDENT; ET AL., DEFENDANTS.

Dec. 10, 1987

MEMORANDUM OPINION

BIGGERS, District Judge.

This class action was commenced on January 28, 1975. The plaintiffs alleged that the defendants were maintaining a racially dual system of public higher education in violation of the Fifth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1981 and 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* On April 21, 1975, the United States, by its Attorney General, filed its complaint-in-intervention pursuant to the Fourteenth Amendment, §§ 601 and 602 of Title VI and § 902 of Title IX of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2. The United States alleged, *inter alia*, that actions of the defendants maintained and perpetuated an unlawful dual system of higher education based on race in violation of the Fourteenth Amendment and Title VI. The plaintiffs essentially seek injunctive relief directing the defendants to bring the various components of Mississippi's public system of higher education into conformity with the requirements of the aforementioned statutes and constitutional provisions.

I. Introduction

The plaintiffs are black citizens of the State of Mississippi, including black students attending or desirous of attending public institutions of higher learning in the State of Mississippi, black taxpayers residing in the State of Mississippi, and parents of black students attending public institutions of higher learning in the State of Mississippi. The chief defendants are the Governor of the State of Mississippi, the Board of Trustees of State Institutions of Higher

Learning, and the individual members sued in their personal and official capacities, each of the institutions identified as the historically white institutions and their chief administrative officers, the State Department of Education, and the State Superintendent of Education.

All public institutions of higher learning in the state are under the management and control of the Board of Trustees of State Institutions of Higher Learning (Mississippi Constitution of 1892, § 213-A), whose authority is plenary. The defendant State Department of Education is charged with the execution of laws relating to the administrative, supervisory, and consultive services to the public schools, agricultural high schools, and junior colleges of the State of Mississippi. The defendant State Superintendent of Education is responsible for the administration, management, and control of the Department of Education, subject to the direction of the State Board of Education. Miss.Code Ann. § 37-3-5 (1972).

The private plaintiffs and the United States assert that at the time of the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed 873 (1954), the defendants had established racially separate systems of public higher education for black and white citizens of Mississippi; that the institutions designated to serve blacks were markedly inferior to the institutions established by defendants to serve whites; that from 1954 until the present defendants have maintained and perpetuated the racially dual system of public higher education through, *inter alia*, policies and practices governing student admissions, employment of faculty and administrative staff, and through the operation of historically white institutions or branches thereof in

close proximity to historically black institutions; that the defendants have denied equal educational opportunity to black students and faculty by discriminating against historically black institutions with respect to, *inter alia*, institutional missions, number and level of academic programs, quality of instructional staff, allocation of land grant functions, the level and quality of physical plant, and the distribution of financial resources; and that defendants have failed to effectively dismantle the racially dual system of public higher education in Mississippi and remain today under legal obligation to eliminate the vestiges of racial dualism "root and branch."

The defendants answered the allegations of the plaintiffs and the plaintiff-intervenor by contending that a good faith nondiscriminatory and nonracial admissions and operational policy with respect to students, faculty, and staff has been implemented and maintained in the state-wide system of public higher education; and that with such a policy designed to insure equality of opportunity, the mere continued existence of institutions of higher learning with predominantly black and predominantly white student bodies and faculty does not represent a denial of equal protection, considering individual freedom of choice of all qualified students, black and white, to enroll in the colleges of their choice, and the varying educational objectives and advantages of such institutions. The defendants contend further that throughout the state-wide system there have been affirmative-action programs designed to attract qualified black students and personnel to historically white institutions and to attract qualified white students and personnel to historically black institutions; that equal protection has been and is achieved by the operation of a state-wide system dedicated to the enhancement of integrated

university opportunities coupled with the goal of quality education; that a fully integrated unitary statewide system of higher education exists in Mississippi today wholly untainted by discriminatory actions or purposes; and that within such a system the achievement of particular proportions or percentages of desegregation must be judicially evaluated with other legitimate educational and societal interests.

Pursuant to 28 U.S.C. § 2281, a three-judge court was convened to preside over this cause. On September 17, 1975, by order issued by Judge William C. Keady (then Chief Judge of the United States District Court for the Northern District of Mississippi and acting in his capacity as managing judge of the three-judge court), a plaintiff class was certified and defined as:

> All black citizens residing in Mississippi, whether students, former students, parents, employees, or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by said Board of Trustees.

On the same day, this court ordered the separation for trial purposes of the claims against the senior colleges and universities, that is, the Institutions of Higher Learning and the Board of Trustees of State Institutions of Higher Learning, from the claims against the sixteen public junior colleges, the Junior College Commission, and the Department of Education.

During the approximately twelve years since this case was filed until the present, considerable time and effort have been devoted by the parties, under the court's auspices, toward the consensual resolution of the many issues raised herein. After repeated good

faith attempts failed to achieve a mutually satisfactory comprehensive agreement, this court [1] ordered the completion of discovery and set this cause for trial to commence on April 27, 1987. Having heard the evidence presented during a five-week bench trial, during which the court heard testimony from 71 witnesses and received 56,700 pages of exhibits, and now having maturely considered the testimony, exhibits and post-trial memoranda submitted by the parties, the court is in a position to enter its findings of fact and conclusions of law pursuant to Fed.R.Civ.P. 52.

II. Findings of Fact

A. History and Overview of the System of Higher Education

The Board of Trustees of State Institutions of Higher Learning (hereinafter referred to as "the Board of Trustees") was created by statute in 1932. In 1944 it became a constitutional board with plenary power over all Mississippi public senior colleges and universities. The Mississippi state-wide system of higher education consists of eight institutions and several entities under the jurisdiction of the Board of Trustees. The eight institutions of higher learning under the Board of Trustees' control are described as follows:

University of Mississippi

Chartered on February 24, 1844, the University of Mississippi, at Oxford, commenced its first session on November 6, 1848, with a faculty of four members. The trustees and the faculty sought to broaden the

[1] In May, 1985, the three-judge court was dissolved and this cause was transferred to the present judge for further proceedings.

work of the institution by the creation of professional and specialized schools so as to build it into a university in fact as well as in name. In accordance with that purpose, the School of Law was opened in 1854.

Coeducation came with the admission of women students in 1882, and the first woman was added to the faculty in 1885. The first summer session was held in 1893, the School of Engineering was established in 1900, and the Schools of Education and Medicine were opened in 1903. Subsequently, the School of Pharmacy was created in 1908, the School of Commerce and Business Administration in 1917, the graduate school in 1927, and the School of Nursing in 1958.

The legislature mandated that the University of Mississippi serve white persons only.

Alcorn State University

Alcorn State University, initially designated as Alcorn Agricultural and Mechanical College, the oldest land grant college for blacks in the United States, had its beginning in 1830 when the Presbyterian Church established Oakland College for the education of white male students in the southwestern region of the state. The Presbyterian school closed its doors at the beginning of the civil war and upon failing to reopen after the war the college was purchased by the state and renamed Alcorn University in 1871, in honor of the late James L. Alcorn who was then Governor of the State of Mississippi.

In accordance with the Morrill Land Grant Act, the Mississippi State Legislature renamed Alcorn University as Alcorn Agricultural and Mechanical College of the State of Mississippi and designated it to

serve as an agricultural college for the education of Mississippi's black youth.

Mississippi State University

In 1878, the legislature established the Mississippi Agricultural and Mechanical College and located it at Starkville, Mississippi. It was opened to students in 1880 and, in 1930, the institution was made coeducational. In 1932, its name was changed by act of the legislature to Mississippi State University of Agriculture and Applied Science. The University is organized for resident teaching, agricultural research, and agricultural extension. The School of Engineering was organized in 1902, the School of Agriculture in 1903, the School of Education in 1935, the School of Business in 1915, and the School of Arts and Science in 1956. The graduate school, organized in 1936, offers courses leading to the Master of Science degree and Doctor of Philosophy degree in the fields of study and investigation which are distinctly in the land grant program of higher education. Additional divisions and activities are: the Business Research Station, Department of Adult Education and General Extension, Department of Military Science and Tactics, State Plant Board, State Chemical Laboratory, State Seed Testing Laboratory, the Engineering and Industrial Research Stations, Agriculture Extension Service, and Agriculture Experiment Station.

Student enrollment at Mississippi State University was restricted to white persons only by act of the legislature.

Mississippi University for Women

The Industrial Institute and College was established by the legislature in 1884 as the first state-supported college established exclusively for the higher

education of women in the United States. The college was located at Columbus, Mississippi and opened its first session in 1885 with Professor R.W. Jones as president. The industrial feature made it possible for women, who otherwise would not have attended college, to work their way through college. The growth of the institution was rapid and steady, almost every year seeing new buildings and new features added. In 1922, its name was changed from Industrial Institute and College to Mississippi State College for Women. Departments are maintained in liberal arts, home economics, music, art, secretarial science, teacher education, and library science. Mississippi University for Women was established by an act of the legislature approved on March 12, 1884 for the education of white women in the arts and sciences.

University of Southern Mississippi

The University of Southern Mississippi is located in Hattiesburg, Mississippi, and was established by an act of the legislature in 1910 under the name of Mississippi Normal College. Its purpose, primarily, was the training of teachers for the public schools of the state. Its first session was opened in 1912. In 1924 the name of the institution was changed to State Teachers College, and changed again by the legislature in 1940 to Mississippi Southern College, and changed again in 1962 to its present name. With the changes in name, there have been changes in function and curricular of the institution. In 1947, graduate work in the fields of education and music were authorized and the Institute of Latin American Studies was organized. In 1957, the Board of Trustees reorganized the college, establishing schools of arts and sciences,

education and psychology, commerce and business administration, and graduate studies.

Student enrollment at the University of Southern Mississippi was restricted to white persons only by act of legislature.

Delta State University

Delta State College was established in 1924 by an act of the legislature and its doors were opened for students the following year. It is located at Cleveland, Mississippi in the Delta region. It is among the youngest of the state's institutions of higher learning. Delta State University confers bachelor of science degrees in education and gives courses in music and art. It also provides a standard liberal arts program leading to the Bachelor of Arts degree.

Jackson State University

Jackson State College, a predominantly black institution located on approximately 50 acres of land in the City of Jackson, Mississippi, was transferred to the State of Mississippi in 1940 to become a training school for black teachers. The instructional program includes liberal arts and teacher education, with nursing and graduate education also offered.

Jackson State University was established by an act of legislature on May 6, 1940, for the purpose of training black teachers for the black public schools of this state.

Mississippi Valley State University

Mississippi Valley State College was established in 1946 by the legislature for the purpose of educating teachers primarily for rural and elementary black schools and to provide vocational training for black students. The college is located at Itta Bena, Mis-

sissippi. It opened its doors to students, in 1950 and has grown into an institution primarily geared toward community service and adult education.

The Board of Trustees is charged with the duty to manage and control the eight public universities. The powers and duties of the Board of Trustees include, *inter alia*, control over all funds appropriated and taxes allocated by the legislature for support and maintenance of the institutions; approval of new academic programs and departments; approval of individual institutional and state-wide capital and operational budgets; approval of admission standards and procedures for each institution (U.S. Exhibit 636).

At the time the United States Supreme Court issued the decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), declaring that the "separate but equal" principle set forth in *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896) was no longer the law and that racially segregated public education was inherently unequal, Mississippi's higher education system was both separate and unequal. In 1954, the Board of Trustees issued a report entitled the "Brewton Report" which attempted to describe the relative disparities existing in the system of higher education in terms of the comparative opportunities available to white and black citizens. The report stated that, as of 1954, the educational opportunities available to black citizens at the university level were limited to teacher education, agriculture and mechanical arts, and the practical arts and trades, whereas white citizens enjoyed a full range of program offerings. The report goes on to note the efforts undertaken by the state and the Board of Trustees to improve the number and level of program offer-

ings available to black citizens in an effort to equalize opportunities.[2]

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[2] In 1954, H.M. Ivy, President of the Board of Trustees, submitted to the full board and its executive secretary, on behalf of the seven board members served as a study committee, a 369-page report entitled "Higher Education in Mississippi". A section of the report entitled "Basic Inequalities in Higher Education in the State" referred specifically to higher education as follows:

> Even greater inequalities exist in the area of higher education. It has been reported earlier that opportunities in this field are limited in the three colleges to undergraduate training in teacher education, in agriculture and the mechanical arts, and in the practical arts and trades; whereas the needs of the white population are served by five colleges, with offerings extending from a variety of undergraduate programs through extensive offerings on the graduate and professional levels. In 1952-53, there were 3,432 students enrolled in all the colleges for Negroes in the state, or 0.3% of the total Negro population; whereas in the colleges and universities for white students, including graduate students, there were enrolled 18,277 students, or 0.9% of the total white population.
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> Of the total of $10,031,539.40 allocated to the institutions for higher education for the period 1952-54, $1,577,175.46 or 15.7% went toward the development of higher education for Negroes. . . . These data have been utilized to establish the point that, in the past, opportunities for the higher education of Negroes in the state have been far less than those provided for other citizens. It should be recognized, however, that there has been awareness of these inequalities on the part of the Board of Trustees of the state institutions of higher learning and the legislature of the state; and steps have been taken to lessen the gaps. Prior to the recent Supreme Court decisions, the legislature adopted a public school equalization program designed to provide the same quality and quantity of education for Negroes as for whites.

At the time of the U.S. Fifth Circuit Court of Appeals decision in *Meredith v. Fair*, 298 F.2d 696 (5th Cir.1962), the Board of Trustees, contrary to the mandate of *Brown v. Board of Education*, *supra*, continued to operate a racially dual system of higher education. At least until October, 1962, enrollment at each of the eight public institutions was limited in accordance with the respective historic racial designation, that is, there were no black students attending any of the historically white universities and no white students enrolled at the historically black colleges. (U.S. Exhibit 636, pages 13-14.) The efforts of the members of the Board of Trustees and the officials of the University of Mississippi together with various state officials, including the Governor and Lieutenant Governor of the State of Mississippi, and the Mississippi Legislature to impede and deter efforts to integrate the student body at the University of Mississippi during the 1961-62 school year are well documented. *See, e.g., Meredith v. Fair*, 305 F.2d 341 (5th Cir.1962), *cert. denied*, 371 U.S. 828, 83 S.Ct. 49, 9 L.Ed.2d 66 (1962); *Meredith v. Fair*, 313 F.2d 534 (5th Cir.1962). Black students were not allowed to enroll at a historically white university under the management and control of the Board of Trustees until after the University of Mississippi was required by order of this court in *Meredith v. Fair* to admit and enroll James H. Meredith. The years in which each of the historically white universities first enrolled a black student are as follows:

University of Mississippi	1962
Mississippi State University	1965
Mississippi University for Women	1966
University of Southern Mississippi	1967
Delta State University	1966

The historically black universities first enrolled a white student in the years indicated below:

Alcorn State University	1966
Jackson State University	1969
Mississippi Valley State University	1970

(U.S. Exhibit 635).

The Board of Trustees' discriminatory policy also encompassed the hiring of faculty and staff at the eight universities. Employment practices followed the historical racial designations at each of the universities. The years in which the eight institutions first employed opposite race, full-time faculty members are as follows:

Historically White Universities

Mississippi University for Women (U.S. Exhibit 232)	1970-71
University of Mississippi (U.S. Exhibit 234)	1970-71
University of Southern Mississippi (U.S. Exhibit 236)	1970-71
Delta State University (U.S. Exhibit 229)	1973-74
Mississippi State University (U.S. Exhibit 231)	1974-75

Historically Black Universities

Alcorn State University (U.S. Exhibit 228)	1966-67
Jackson State University (U.S. Exhibit 230)	1967-68
Mississippi Valley State University (U.S. Exhibit 233)	1968-69

Several years after the efforts to integrate the student bodies at each of the eight public universities reached their focal point, the United States Department of Health, Education and Welfare (hereinafter referred to as "HEW") attempted to extract from the State of Mississippi and the Board of Trustees a cohesive plan designed to disestablish the former *de jure* racially segregated system. In response to a March, 1969 HEW letter sent to the state requesting the submission of a desegregation plan to HEW within 120 days, the Board of Trustees submitted a "Plan of Compliance" in 1974 (U.S. Exhibit 1). On September 19, 1974, the Board of Trustees officially instructed the presidents of each university to implement the Plan of Compliance to the best of their abilities within the resources available. (U.S. Exhibit 913.) The Plan of Compliance expressed a basic objective of improving educational opportunities for all citizens emphasizing equal access and the retention of members of minority races to be enrolled and/or employed at all public colleges and universities in Mississippi. The Plan of Compliance made specific projections for opposite race student enrollment at each of the institutions of higher learning from 1973 through 1981 and promised assessment of enrollees and necessary remedial and developmental programs, in order to promote opposite race student retention. Specific projections were made also with respect to faculty and staff hiring for the eight institutions for the years 1974 through 1981. The Plan noted that special efforts would be necessary to comply with the projections for faculty and staff hiring, which contemplated recruiting qualified undergraduate students, and further noted that additional monies would be sought from the legislature to support this program. As to academic programs, the Plan stresesed the importance

of desirable programs in attracting students to universities, placed a high priority on strengthening existing programs at the three historically black institutions, and promised priority for such institutions for new programs.

The Plan of Compliance also set forth mechanisms for eliminating the competition experienced by Jackson State University and Alcorn State University posed by the operation of the University Center in Jackson and the University of Southern Mississippi Center at Natchez. The Plan stated that the physical appearance of schools would be closely scrutinized and improvements would be made as funds were made available by the legislature, and further observed that funding had been distributed among the institutions in an equitable manner in the preceding four years, and special legislative appropriations would be sought in order to assist in the implementation of the projections and goals set forth in the Plan of Compliance.

Although HEW's Office of Civil Rights rejected the Board of Trustees' proposed Plan of Compliance for failure to address the separate public junior college system over which the Board possessed no authority, the Board of Trustees adopted the Plan of Compliance and required that each of the institutions under its control adopt policies and procedures designed to implement the goals and projections set forth in the Plan of Compliance. HEW's rejection of the Plan of Compliance precipitated this lawsuit.

B. Student Admission, Recruitment and Retention

1. Admission Requirements and Student Enrollment

The plaintiffs allege that black students are denied equal access to the institutions of higher learning because of the entrance requirements set up by the Board of Trustees.

On February 1, 1961, the Registrar of the University of Mississippi received an application from James H. Meredith, a black male, who sought admission to the 1961 mid-year or spring session, which commenced on February 6, 1961. (U.S. Exhibit 913.) On February 4, 1961, the Registrar informed Meredith that consideration of all pending applications had been discontinued due to alleged "overcrowded conditions." Several days later, on February 7, 1961, the Board of Trustees adopted a policy governing admission to the eight institutions of higher learning. The new policy required that all students applying for admission to the freshman class of any of the state institutions of higher learning as of September 1, 1961, must take a test or tests prepared by the American College Testing Program (ACT). This policy also addressed acceptance of transfer students, transfers at mid-term, applications containing "false, contradictory, questionable, or uncertain data," and receipt of a "letter of admission" before presenting oneself for registration. (U.S. Exhibit 913.)

On April 20, 1961, the Board of Trustees reaffirmed the alumni voucher requirement adopted in 1954 which required the submission of at least five letters of recommendation as to good moral character from alumni of the institution(s) to which application is made. (U.S. Exhibit 912; U.S. Exhibit 64.) On August 24, 1961, the Board of Trustees adopted a more detailed admission policy. In addition to reiterating the admission requirements promulgated on February 7, this policy: (a) "authorized [each institution] to set a minimum score which applicants to such institution must each make on the American College Test [hereinafter referred to as "ACT"] in order to be eligible for consideration for admission," (b) provided

that applications could not be considered "continuing," and (c) stated that applications must include "substantially complete responses made in good faith."

A short time after Meredith was denied admission to the University of Mississippi the Fifth Circuit Court of Appeals in *Meredith v. Fair*, 298 F.2d 696 (5th Cir.), *cert. denied*, 371 U.S. 828, 83 S.Ct. 49, 9 L.Ed.2d 66 (1962), required his immediate admission and struck down the alumni voucher requirement as "a denial of equal protection of the laws, in its application to Negro candidates." *Meredith*, 298 F.2d at 701-02.

In 1963, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi enacted policies requiring all freshman applicants to achieve a minimum composite ACT score of 15. (U.S. Exhibit 913.) Mississippi State University and the University of Southern Mississippi did not admit their first black pupils until 1965 and 1967, respectively.

As of the mid-1970's, the Board of Trustees had not established comprehensive admission standards on a system-wide basis that incorporated either high school achievement or specific ACT requirements. While the Board of Trustees continued to follow its policy of requiring all applicants to take the ACT, each institution was afforded wide latitude in the utilization of the test. Mississippi State University, the University of Mississippi, and the University of Southern Mississippi continued to follow a policy which contemplated achievement of a minimal score of 15 with qualified admission of students failing to achieve this score; Delta State University similarly required a 15 with probationary admission being afforded to students achieving ACT scores of 12, 13, and 14. Mis-

sissippi University for Women utilized a regression equation which included the ACT composite score as a component; and Alcorn State University, Jackson State University, and Mississippi Valley State University, while requiring all students to take the ACT, did not require a minimum score for admission. (U.S. Exhibit 039.)

Concerns arose during the 1975-76 academic year with respect to the continued appropriateness of the admission policies and procedures in place at each of Mississippi's public universities. Prompted by complaints voiced by university faculty and staff regarding the low quality and level of preparation of incoming freshmen, the Board of Trustees and its professional staff began to scrutinize the basic reading, writing and computational skills of entering freshmen. The Board of Trustees found that the complaints it had received were bolstered by the tremendous losses in enrollment occurring between the freshman and sophomore years at Alcorn State University, Jackson State University and Mississippi Valley State University which indicated that substantial numbers of incoming students were either not capable of doing college level work or were simply unprepared.

As a consequence, the Board of Trustees staff embarked upon a review of institutional admission practices. The staff found that during academic years 1973-74, 1974-75, and 1975-76 the institutions had admitted students with ACT scores as low as 1 and 2. Alcorn State University, Jackson State University, and Mississippi Valley State University had enrolled significant numbers of students with ACT scores of 9 and below. Moreover, the three major doctoral granting universities had likewise admitted appreciable numbers of students achieving ACT

scores below 15. (Board Exhibit 176; Board Exhibit 177.)

The Board of Trustees attempted to address these concerns in May, 1976 by promulgating its first policy establishing minimum ACT scores for college admission to be effective the Fall of 1977. The policy stipulated that no student was to be admitted to any institution as a first-time freshman who failed to achieve an ACT score of 9. This first policy also provided that those institutions presently requiring higher minimum ACT scores were to continue those requirements. (Board Exhibit 179.) High school grades were not adopted as a component of the admission standards.

The admission standards were revised in the succeeding months to allow Mississippi State University, the University of Mississippi, and the University of Southern Mississippi to admit students with scores of 12, 13, and 14 on a probationary basis during the summer session. The policy revision provided that if such students maintained a "C" average during the summer, they were permitted to enroll in the fall semester.

In October, 1977, Dr. Walter Washington, President of Alcorn State University, requested the right to increase admission standards at that institution. Dr. Washington sought and obtained authority for step scale increases first from the 9 ACT test score to 11, then to 13, and it was hoped ultimately to a 15 ACT score by the fall of 1980. Dr. Washington simultaneously obtained, however, the right to admit students scoring 9, which is less than the otherwise applicable ACT minimum, up to a total number of students equal to 10% of the institution's previous year's fall enrollment. (Board Exhibit 179.)

The Board of Trustees again liberalized the admission standards in December, 1977. Responding to discussion that some students scoring below 15 on the ACT may nevertheless be capable of doing college work, the Board authorized Delta State University, Misssissippi State University, the University of Mississippi, and the University of Southern Mississippi to go as low as a composite score of 9 in admitting students on an exception basis. Such admissions were to be afforded under a "special talents" or "high risk" category.

In response to the continuing concerns of university faculty and staff regarding the quality of enrolling students, the Board of Trustees established in December of 1979 a comprehensive developmental studies program in an effort to improve the classroom performance of students identified as having deficiencies in certain subject matter and to improve retention rates. Low achievers, identified by ACT score, were required to enroll in and pass certain special remedial courses designed and implemented at each of the institutions of higher learning. Those enrolled in the remedial courses would then be permitted to "test out" of the program upon mastery of the courses.

By 1982, it appeared that the ACT minimums coupled with the developmental studies programs in place at each institution were not adequately addressing the problem of academically unprepared students enrolling in and graduating from the universities. As many as one-third of all freshman students were enrolled in remedial courses. At the same time, the Mississippi system of higher education was experiencing substantial budget cuts while expending approximately $1,000,000.00 per year for developmental studies and remedial programs.

In an attempt to positively influence the level of preparation of entering freshmen, the Board of Trustees adopted a policy which required as a prerequisite for admission the successful completion of certain essential academic courses at the high school level. It was determined that the completion of a "core curriculum" high school course program would raise the level of academic readiness and, when assessed in light of the achievement on the ACT, would provide a reasonable degree of assurance that entering freshmen would be prepared to attempt a university level education. In July, 1982, the Board of Trustees thus adopted a high school college preparatory program known as the "core curriculum" for actual implementation in the Fall of 1986 which consisted of required courses in high school in the sciences, math and English. (Board Exhibit 441.)

In July, 1984, the Board of Trustees approved the request of Dr. James Hefner, President of Jackson State University, to raise the ACT minimum score required for automatic admission to 12, and in February, 1986 the Board of Trustees approved a similar request to raise the standard to 13. Exceptional admissions for students scoring below these minimums were preserved. (U.S. Exhibit 849; U.S. Exhibit 851.)

In April, 1986, Mississippi Valley State University also advised the Board of Trustees of its desire to enhance its image as a quality institution by raising admission standards. The Board of Trustees approved the request of Dr. Joe Boyer, President of Mississippi Valley State University, to raise the minimum ACT score for automatic admission to 13. Dr. Boyer also requested and obtained increased flexibility, that is, 10% of the previous year's total fall

enrollment, for the admission of students scoring from 9 to 12. (U.S. Exhibit 852.)

Currently, the principal elements for admission to the state universities include (1) academic achievement in high school, (2) achievement on the ACT, and (3) junior college transfer procedures. All entering freshman students are required to have earned the following high school units in grades 9 through 12 in satisfaction of the core curriculum requirement: English—4 units; mathematics—3 units; sciences—3 units; social sciences—2.5 units; and required elective—1 unit. Deferral and exemption policies do exist, however, which permit student admission without satisfaction of all course requirements on an exceptional basis (such as a particularly high score on the ACT). The core curriculum requirement applies equally to all eight public universities, but the exemption policies are more liberal for the historically black institutions. No student may be admitted to a public university unless he or she satisfies the course requirements or falls under a deferral or exemption category. No particular grade point average is required—receipt of high school credit signifying course completion is all that is necessary. (Board Exhibit 183a, pages 4-6, 9, 12.)

The high school core curriculum and ACT score requirements apply only to the admission of first-time freshmen. Applicants who fail to satisfy either or both requirements may attend other accredited institutions of higher learning. Mississippi has numerous public junior colleges which offer automatic enrollment to high school graduates. Transfer from a junior college to the public universities may be made without satisfaction of the core curriculum or ACT score requirements. These students may transfer

after the completion of 24 hours at a junior college with a "C" average. In some instances, students without the requisite ACT score may transfer after satisfactory completion of as few as 15 hours at the junior college level. (Board Exhibit 183a, pages 8-12).

The Board of Trustees currently requires every Mississippi resident applicant under 21 years of age to take the ACT. No student who scores below 9 on the ACT is eligible for admission as a first-time freshman to any of the eight public universities. The minimum test score required for automatic admission varies among the institutions as do the available exceptions for admission of students who fail to achieve the ACT minimum score required for automatic admission.

The Board of Trustees requires a minimum of a 15 ACT composite score for automatic admission to Delta State University, Mississippi State University, Mississippi University for Women, the University of Mississippi and the University of Southern Mississippi. Exceptions do exist and flexibility is afforded, however, with respect to the minimum score. Each of the above institutions may enroll on an exceptional basis a number not to exceed 5% of the previous academic year's freshman class enrollment or 50 students (whichever is greater) to accommodate talented or high risk students with ACT composite scores of 9 to 14. (Board Exhibit 183a, page 9).

Mississippi University for Women has elected with the approval of the Board of Trustees to implement higher admission standards. Commencing the Fall of 1987, students seeking automatic admission to Mississippi University for Women must submit an ACT composite score of 18 or an ACT score of 15, 16 or 17 together with a high school grade point average of

3.0 on a 4.0 scale. Students scoring 15, 16 or 17 on the ACT without achieving a 3.0 grade point average in high school are considered for exceptional admission. No student who scores below 15 on the ACT is eligible for admission as a first-time freshman. (U.S. Exhibit 965, pages 91-99, 121-123.)

Applicants seeking automatic admission to Jackson State University must score a minimum of 13 on the ACT. Again, exceptions do exist and flexibility is afforded with respect to those applicants scoring from 9 to 12 on the ACT. As to these applicants, Jackson State University may enroll a number equivalent to 8% of the previous year's freshman class to accommodate those identified as talented or high risk students. Applicants with 9 to 12 ACT composite score who also have a 3.0 grade point average or who rank in the upper 50% of their high school graduating class are exempt from the 8% exceptional allowance. (Board Exhibit 183a.)

The Board of Trustees requires a minimum composite score of 13 on the ACT for automatic admission to Alcorn State University and Mississippi Valley State University. These institutions are likewise afforded substantial flexibility as to those applicants who score from 9 to 12 on the ACT. Applicants scoring in that range may be admitted but enrollment is limited to a number equivalent to 10% of the previous year's freshman fall term enrollment. (Board Exhibit 183a, pages 10-11.)

A. The American College Test (ACT)

Because black students on average score lower than white students, the plaintiffs allege that basing admission requirements on ACT scores discriminates unjustly against blacks.

The ACT was developed in the mid-West during the late 1950's as the nation entered into a period of substantial enrollment growth for colleges and universities. Today, every state has at least on institution making some use of the ACT data; the ACT is the predominant admissions test in some 28 states; over 20,000 educational institutions utilize the ACT assessment program; and over 1,000,000 students were tested this past year through the ACT assessment program. (Board Exhibit 162.)

The ACT assesses general educational development on a nationally standardized basis. The test shows at what educational stage the student is at the time of the test—not the innate ability or potential of the students but the present educational development. The test actually consists of a battery of four tests addressing the areas of English, mathematics, social studies, and natural sciences. These four tests measure the developed academic abilities deemed important for success in college. In addition to providing a highly relevant status report on student school achievement, the ACT, as a standardized instrument, enables educators to assess uniformly the level of academic preparation of students graduating from high schools across the state. The ACT further provides information necessary for student placement and serves as a valid predictor of academic performance during the first year of college. (Board Exhibit 162.)

The positive relationship between performance on the ACT and academic achievement during the freshman year at Mississippi universities is well established. The research services offered by ACT as well as the Board of Trustees generated tabular data correlating ACT scores and college grades. Both plainly evidence this positive relationship. (U.S. Exhibit 946,

pages 32-40; U.S. Exhibit 967, pages 75-78; Board Exhibit 275.)

Average ACT scores do differ among Mississippi black students as contrasted with Mississippi white students. Black students on the average score somewhat lower. Yet, this is not a Mississippi phenomenon but rather a national pattern. Scores on the ACT correlate with the socio-economic status of the student. It is not as much a racial correlation as an economic one. Dr. Thomas Satterfield, Deputy Superintendent of Education, State of Mississippi, testified that as more students, black and white, choose to take the core curriculum now offered by high schools in the state, the ACT score rises measurably. The studies have shown that fewer black students on a percentage basis choose to take the core curriculum than do whites, but as more blacks choose to take the curriculum, their scores are also higher than blacks and white who choose not to take it.

Differential scores can also be found according to the sex, age, and family income of students tested. (Board Exhibit 172, pages 3, 10; U.S. Exhibit 874, pages 7-8.) Nationally, 95% of all ACT-tested students scored 9 or above and over 70% of all students score 15 or above. (U.S. Exhibit 874, page 9.) Nine out of every ten ACT-tested students in Mississippi, including 80% of all black students, score 9 or above on the ACT; and students who achieve a 9 on the ACT English and social studies test are only reading at a ninth grade level. (Board Exhibit 190, pages 5-10.) Students scoring a 15 on the ACT are themselves only on the verge of a freshman reading level. (Board Exhibit 190, pages 5-10.) Thus, the Board-established minimum Act scores are extremely modest levels of required performance. Indeed, a United States expert

characterized scores of 10 and 11 as "drastically low" and certainly not reflective of a level of academic achievement for college work. (Board Exhibit 463, pages 160-61.)

Very few black students, if any, are actually denied admission to a Mississippi university as a first-time freshman for failure to achieve the minimal ACT score. Alcorn State University, Jackson State University, and Mississippi Valley State University did not deny admission to a single applicant for the fall of 1986 who scored 9 or above on the ACT. (U.S. Exhibit 960, pages 109-10.) Similarly, Mississippi State University did not deny admission to a single applicant scoring above 11 on the ACT and the University of Mississippi denied admission to only nine black freshman applicants who completed an application for admission. (U.S. Exhibit 964, pages 140, 144-45.) The University of Southern Mississippi has not admitted its full quota of students who score below 15 on the ACT in recent years due to an insufficient number of applicants in that category.

The admission standards now in place are more modest than the National College Athletic Association Proposition 48, the much publicized policy for college student athletes. The NCAA admissions policy requires achievement of specified ACT composite scores in order for student athletes to be eligible to participate in athletics. In 1986, student athletes could score as low as 13 and participate in athletics; in 1987, they may score as low as 14; but beginning in August of 1988, all student athletes must achieve an ACT composite score of 15 and at least a 2.0 grade point average on a 4.0 scale. Unlike the Board of Trustees' standards, there are no exceptions to this 15 requirement. Moreover, the current Board of Trustees policy

does not require students to achieve a 2.0 grade point average.

The Board's prescribed pre-college curriculum is an appropriate measure of academic progress and achievement in high school. (U.S. Exhibit 970, pages 49-54.) There is substantial evidence that the completion of the high school course requirements has resulted in a higher level of academic preparation for those students wishing to experience the rigors of academic life at the university level. Since the implementation of the high school "core curriculum," the necessity for developmental education in college has declined significantly and ACT scores have improved dramatically. (Board Exhibit 167, pages 8-9.) The mean ACT score in 1986 for black students who completed the high school college prepatory core curriculum was 14.3 while the mean score for those students not completing the core curriculum was only 10.8. (Board Exhibit 170.)

The modesty and reasonableness of the ACT score requirements for automatic admission are reinforced by the substantial flexibility afforded through exceptions to these minimum scores. (U.S. Exhibit 970, pages 58-59.) Each institution takes into account educational criteria in addition to ACT scores and high school courses completed in evaluating whether an applicant who has scored below the ACT threshold for automatic admission should be admitted. Grades, class rank, extracurricular activites, special talents, and recommendations of teachers and counselors are considered in attempting to identify students with reasonable prospects for academic success in college. (U.S. Exhibit 967, pages 66-71; U.S. Exhibit 961, pages 143-44; U.S. Exhibit 962, pages 145-51.)

b. Admission from Junior Colleges

Under the present policies, no applicant for first-time freshman admission to a public university is denied the opportunity to obtain a university degree for failure to achieve a particular ACT score, including the floor requirement of 9. At most, admission is deferred. Students may attend a public junior college, all of which have open admission policies, and then transfer to a senior college after successful completion of as few as 15 hours. (Board Exhibit 183A, page 8.) This procedure is not unreasonable or unduly burdensome. Indeed, thousands of students elect to attend junior colleges in Mississippi (Board Exhibit 185), and substantial numbers of these students subsequently transfer to public universities (U.S. Exhibit 965, pages 111-12, 117; U.S. Exhibit 001, page 27). In 1986, 60% of all the college students in Mississippi were enrolled in the junior colleges.

The defendants argue that the Act requirements currently in use are reasonable and constitutional and that medical, law and engineering hopefuls should be held to at least as high admission standards as the NCAA requires of tight ends.

2. Student Recruitment

Although all eight universities have admitted "other-race" students since the 1960's (see pp. 16-17), nevertheless the historically black institutions are still predominantly black and the historically white institutions are still predominantly white. The question before the court is whether the racial identities of these universities is a result of the present free choice of the students or of official state policies and practices to promote the continued historical racial identity of each university.

Those individuals at each of the institutions with responsibility for student recruitment are responsible for recruiting other-race students as well. In addition, universities employ other-race recruiters charged with specific responsibility for the recruitment of other-race students. Other-race students, faculty, and alumni participate in the institution's recruitment efforts. Multi-racial recruiting teams are frequently used. (Board Exhibit 105, page 5; Board Exhibit 069, page 5; Board Exhibit 044, pages 6-7; Board Exhibit 129, page 18.) The universities also make use of various recruitment brochures and other university publications which have an other-race emphasis and which seek to convey the institutions' commitment to other-race participation.(Board Exhibit 129, page 18; Board Exhibit 069, page 5, appendix; Board Exhibit 044, page 7; U.S. Exhibit 867, page 15; U.S. Exhibit 962, pages 19-20.) The universities also utilize news releases, promotional radio spots, public service announcements, newspaper advertisements, and slide presentations emphasizing other-race participation in university life. (Board Exhibit 033, page 4; Board Exhibit 046, page 12; Board Exhibit 071, page 3; Board Exhibit 077, page 8; U.S. Exhibit 962, page 19.)

Each of the universities initiates and maintains numerous contacts with high schools and junior colleges in their recruiting efforts. Each university strives to recruit at as many high schools and junior colleges as possible, including schools with substantial other-race enrollment. (Board Exhibit 021 through Board Exhibit 129.) High school counselors are informed of activities of special interest to minorities (Board Exhibit 129, page 18) and campus minority recruitment conferences in which minority students and counselors are asked to make campus visits.

(Board Exhibit 105, page 6; U.S. Exhibit 867, page 15.) The Board of Trustees does not permit the university to recruit at schools which fail to execute an agreement to allow multi-racial recruiting teams. (Board Exhibit 102, page 5; U.S. Exhibit 962, page 27; U.S. Exhibit 001, page 6.)

The recruitment of minority students appears to be a competitive business; both the historically white institutions and the historically black institutions continually strive to increase enrollment of other-race students. Recruitment efforts have resulted in the representation of blacks in the freshman classes at Delta State University, Mississippi State University, Mississippi University for Women, and the University of Southern Mississippi in statistical parity with the representation of blacks in the qualified applicants pools. Qualified blacks and qualified whites are equally likely to apply, be accepted, and enroll at these universities. (Board Exhibit 192; Board Exhibit 193.) Black students who choose to enroll at a historically white university appear to perform well and are well received. Dr. James McComas, President of the University of Southern Mississippi, the second largest of the eight institutions, testified that a larger percentage of the black students who return as sophomores after their freshman year go on to graduate on time than do the same category of white students. Black students at the University of Southern Mississippi have been elected Homecoming Queen, Mr. University of Southern Mississippi, and to the Hall of Fame.

C. Faculty Recruitment

The statistical presence of other-race faculty at the historically black institutions is substantial and unchallenged. Approximately 32% of Alcorn State

University's faculty is white, at Jackson State University 33% of the faculty is white, and at Mississippi Valley State University approximately 26% of its faculty is white. (U.S. Exhibit 742a; U.S. Exhibit 742c; U.S. Exhibit 742(f).) The defendant universities recruit and hire faculty on a nationwide basis. (U.S. Exhibit 946, page 122; U.S. Exhibit 969, pages 12-13; U.S. Exhibit 963, page 20.) The historically white institutions expend substantial affirmative efforts in an attempt to attract and employ other-race faculty, including (1) publication of position availability in the *Chronical of Higher Education*, as well as in publications specifically addressing minority interests, such as the *Affirmative Action Register*, *Equal Opportunity Forum*, and *The Black Scholar* (U.S. Exhibit 969, page 14; U.S. Exhibit 946, page 114; U.S. Exhibit 758), (2) publication of position availability in the specific discipline periodicals for which there is an open position (U.S. Exhibit 959, page 13), (3) mailings to and distribution of vacancy notices among the institutions of higher learning, (4) announcements placed with regional and national meetings of disciplines in which openings exist (U.S. Exhibit 758), (5) establishment of distinguished professorships, employment of visiting professors, and presentation of black guest lecturers and visiting scholars (Board Exhibit 041, page 18; Board Exhibit 104, pages 27, 32), (6) special funds allocated to minorities for salary incentives, supplementation, and support (U.S. Exhibit 946, page 115), and (7) organizing and funding committees specifically responsible for minority recruitment (Board Exhibit 104, page 26).

Recruitment of minority faculty is severely hampered by the acute shortage of supply of minority individuals having the requisite qualifications. For

example, from 1977 to 1982, out of 1,067 Ph.D's awarded in chemical engineering in the United States, only 6 or less than 1% were awarded to blacks; out of 1,679 Ph.D's awarded in electrical engineering, only 29 or less than 2% were awarded to blacks; and in European history, a field included within the social sciences where blacks are generally best represented, out of 1,165 Ph.D's awarded, only 6 or less than 1% were awarded to blacks. Moreover, business and industry keenly compete with educational institutions for the extremely limited number of blacks who hold terminal degrees. Further, the push to employ more minority faculty is a nationwide issue. Institutions throughout the country are competing for the same limited supply and finding it extremely difficult to increase the percentage of other-race faculty. Mississippi universities are at a distinct competitive disadvantage in attempting to attract, employ, and retain qualified black faculty members. Due to Mississippi's difficulties in funding higher education, faculty salaries are not competitive with many larger universities; faculty salaries tend to be several thousand dollars below national averages; and salary increases for faculty have been proportionately lower than in surrounding states where the higher education dollar is not spread among so many institutions with duplicate programs. Non-competitive salaries are significant with respect to the recruitment of minority faculty due to the limited supply and great demand for minority faculty throughout the country which affords the black faculty member substantial leverage in financial negotiations.

The high demand for black faculty makes it difficult to retain those who are hired. Institutions outside Mississippi are frequently able to lure black

faculty away with more financially attractive opportunities after the teachers have gained needed experience in Mississippi institutions. (U.S. Exhibit 969, page 10; U.S. Exhibit 963, pages 22-23.)

Since 1974, the percentage of blacks hired by Mississippi universities exceeded the black representation in the qualified labor pool. There were some 53 more blacks hired in faculty positions than one would have expected given the representation of blacks in the qualified labor pool, and this pattern holds at each of the five historically white institutions. (Board Exhibit 430; Board Exhibit 214 through Board Exhibit 217; Board Exhibit 431.) Moreover, even though the turnover rate for black faculty is higher than for whites, the representation of blacks among the faculty at each of the five historically white institutions is statistically in line with the relevant labor market for faculty employment since 1974. (Board Exhibit 207 through Board Exhibit 212.)

D. Institutional Mission & Academic Programs

1. Program Offerings and the Assignment of Institutional Missions

The plaintiffs have alleged that segregation has been perpetuated by the Board assigning the historically white universities more comprehensive undergraduate and graduate programs offering doctoral degrees than assigned to the black universities, thus discouraging white students from attending black universities.

As stated above, at the time the Board of Trustees issued the Brewton Report in 1954, higher education opportunities for blacks in the State of Mississippi were limited to the three black colleges which offered undergraduate training in the areas of

teacher education, agriculture, mechanical arts, and the practical arts and trades. The white population was served by five colleges, which offered a variety of undergraduate programs complemented by extensive offerings on the graduate and professional levels. (U.S. Exhibit 29, page 148.) By the mid-1960's all five of the historically white institutions offered graduate work. Jackson State University was the only historically black institution that offered graduate work. (U.S. Exhibit 29.)

From 1967 through 1984, Jackson State University experienced a tremendous period of growth in both the number and types of academic programs offered. Academic programs were established in such fields as industrial technology, computer science, mass communications and meterology. Five schools—the School of Business and Economics, the School of Education, the School of Liberal Studies, the School of Science and Technology and the Graduate School—were established. The Graduate School grew from a single master's degree in school administration to 35 master's degrees, 15 specialist's degrees and a doctorate in early childhood education. Accreditations grew from regional accreditation by the Southern Association of Colleges and Schools to numerous national professional accreditations in such areas as teacher education, industrial technology, rehabilitation education, chemistry, social work, art design, music and public affairs and administration. (Board Exhibit 463, pages 108-09).

By 1981, the three comprehensive historically white institutions (Mississippi State University, the University of Mississippi and the University of Southern Mississippi) offered more programs than the three historically black institutions. There was

comparability, however, in the number of program offerings between the regional universities of Alcorn State University and Mississippi Valley State University on the one hand and the two remaining historically white institutions, Delta State University and Mississippi University for Women. No historically black institution then and now offers a professional degree in programs such as law, medicine, dentistry, or pharmacy. (U.S. Exhibit 682.) Jackson State University is the only historically black institution that offers degree programs above the specialist level. (U.S. Exhibit 684.)

As a consequence of the 1974 Plan of Compliance and in conjunction with the academic program review process commenced in 1980, the Board of Trustees in 1981 attempted to define the role and scope of its eight public universities in a document entitled "Mission Statements." (Board Exhibit 274). The document presented a trichotomous classification scheme labeling each institution either "comprehensive," "urban," or "regional." It is common within higher education practices to classify universities according to "mission"—a term synonymous with "role and scope." Such classifications are generally based on the number and level of degree programs offered by an institution, the fields in which degrees are granted, the extent to which an institution conducts and receives funding for research, and areas of public service responsibility. The assignment of missions among institutions of higher learning is in fact necessitated by limited financial resources in the higher education budgets. All institutions cannot offer terminal degrees in all fields. Missions and special fields of excellence must be assigned.

Dr. James Millett, former President of the University of Miami (Ohio) and Chancellor of the Ohio

Board of Regents, testified that every state Board struggles with the task of assigning missions to its universities—that is, every state save one. Wyoming has no such problem because it has only one state university. Dr. Millett testified, and the court so finds, that the missions assigned to the regional black colleges and the regional white colleges should depend on the financial resources of the state. According to Dr. Millett, some black students feel more comfortable and the cultural and social atmosphere for education is better for some at black colleges than at large, comprehensive universities; and that, therefore, black colleges do have a place so long as blacks also have equal access to the large, comprehensive universities and the state has sufficient funds to maintain the black colleges and their duplicating, overlapping programs of higher education.

The Board of Trustees thus designated Mississippi State University, the University of Mississippi and the University of Southern Mississippi as "comprehensive" universities which implied that these institutions offered the greater number and higher level of degree programs than did the remaining institutions. The comprehensive designation also implied that each institution was expected to offer a number of programs on the doctoral level but not in the same disciplines. Leadership responsibilities in specific disciplines have been assigned to each comprehensive university in order to promote program quality and the efficient utilization of limited resources. (Board Exhibit 274; U.S. Exhibit 683, pages 3-8.)

As the only university designated as an "urban" university, Jackson State University's role has been defined as one oriented toward service of the urban community, that is, the City of Jackson. Its mission

is to instruct in research and public service with particular emphasis on the needs of the urban community in which it is located. (Board Exhibit 274.) In 1981, and at the present time, the number and level of programs offered at Jackson State University were, and are, significantly greater than the average offered at the "regional" Mississippi institutions, Delta State University and Mississippi University for Women, but less than that offered at the "comprehensive" institutions.

Alcorn State University, Delta State University, Mississippi University for Women and Mississippi Valley State University have received the designation of "regional" universities. The "regional" designation signifies a more limited programmatic focus for these institutions, that is, each is expected to restrict course offerings to quality undergraduate instruction. Apart from Alcorn State University's land grant activities, research and public service responsibilities are to be limited. (Board Exhibit 274; U.S. Exhibit 683, pages 10-12).

2. Program Reduction and Program Duplication

In 1980, all programs below the doctoral level except certain professional programs were subjected to an intensive six-year review. (Board Exhibit 263, chapter 1 and 2.) Implementation of the review process included: (1) an exhaustive review by the Board's staff of the program review literature and instruments utilized in previous program reviews conducted across the nation; (2) compilation of review documents covering the scope of prospective reviews; (3) pilot review of a selected few programs to test the process; (4) following pilot review, documentation of operational procedures for the review

(Board Exhibit 266); (5) employment of professional consultants to review each program; and (6) uniform utilization of data-gathering instruments addressing such factors as program need, program demand, student enrollment, courses taught, faculty qualifications, degree requirements, degrees awarded, employment of graduates, program relationship to institutional mission, and program costs (Board Exhibit 268; Board Exhibit 269).

As a result of this review process, the Board ordered a substantial decrease in the number of programs, across degree levels at both the historically black and the historically white institutions. The average number of programs offered at the historically white institutions decreased from 77 to 52 at the bachelor's level, 47 to 32 at the master's level, 9 to 4 at the specialist's level, and 12 to 11 at the doctoral level. With respect to the historically black institutions, the average number of programs decreased from 42 to 29 at the bachelor's level, 12 to 10 at the master's level, and 4 to 3 at the specialist's level. Overall, a total of 43 programs were eliminated at the three historically black institutions between 1981 and 1986 and a total of 227 programs were eliminated at the five historically white institutions over the same time period. (U.S. Exhibit 685, page 87; U.S. Exhibit 685(v).)

The program reductions also had the effect of reducing the amount of program duplication which had existed within the Mississippi system of higher education prior to 1981. As of 1986, however, program duplication persisted. Program duplication refers to those instances in which broadly similar programs are offered at more than one institution. A program is defined as necessarily duplicated if the presence of that program is essential for the provision of general

education or specialized education in the basic liberal arts and sciences at the baccalaureate level. Program duplication and necessary duplication refer to the core programs, that is, programs that are considered to be essential. Unnecessary duplication refers to those instances where two or more institutions offer the same nonessential or noncore program. Under this definition, all duplication at the bachelor's level of nonbasic liberal arts and sciences course work and all duplication at the master's level and above are considered to be unnecessary.

In assessing the amount of unnecessary program duplication existing within the Mississippi system of higher education today based upon a comparison of the historically black institutions and the historically white institutions, disregarding institutional mission and demand for programs, it is found that at the bachelor's level, 34.6% of the 29 programs offered at the historically black institutions are unnecessarily duplicated by the historically white institutions. At the master's level, 9 of the 10 programs (or 90%) offered at the historically black institutions are unnecessarily duplicated at the historically white institutions. There also exists a substantial degree of unnecessary program duplication at the specialist level between the historically black and historically white institutions. (U.S. Exhibit 685(f)(g). The historically white institutions as a group have lower percentages of duplication than the historically black institutions since the historically white institutions offer more programs than are offered at the black institutions. (U.S. Exhibit 685, page 11; U.S. Exhibit 685(c).)

Assessing the amount of unnecessary program duplication existing between the comprehensive versus

noncomprehensive universities without consideration of the historical racial designation of the institutions, the court finds that at the bachelor's level 39.1% of all courses offered at the noncomprehensive universities are duplicated or also offered at the comprehensive universities. At the master's level, 87.9% of the programs offered at the noncomprehensive universities are also offered at the comprehensive universities.

Considering the amount of unnecessary program duplication existing between the comprehensive universities versus the historically black and the historically white noncomprehensive universities, the court finds that 32.7% of the programs offered by the historically black universities at the bachelor's level are unnecessarily duplicated by the comprehensive universities. At the master's level, 86.2% of the programs offered by the historically black universities are unnecessarily duplicated by the comprehensive universities. On the other hand, 48.9% of the programs offered by the historically white noncomprehensive universities at the bachelor's level are unnecessarily duplicated by the comprehensive universities. At the master's level, 92.9% of the programs offered by the historically white noncomprehensive universities are unnecessarily duplicated by the comprehensive universities. Thus, a higher percentage of unnecessary program duplication exists between the historically white noncomprehensive universities vis-a-vis the comprehensive universities than exists between the historically black universities and the comprehensive universities. (Board Exhibit 262.) Needless to say, this large amount of unnecessary duplication of programs at institutions which in some cases are less than 50 miles apart in sparsely populated areas is not a model of economic efficiency. For

example, the unnecessary duplication of programs and administrations by two noncomprehensive universities, Delta State and Mississippi Valley State, only 35 miles apart in the rural, financially strapped Mississippi Delta, cannot be justified economically or in terms of providing quality education; and the unnecessary duplication by Mississippi State University and Mississippi University for Women, only 20 miles apart in the eastern hill section of the state, cannot be justified on an economic or efficiency basis; however, this case is not about the efficiency or the economic wisdom of higher education policies. It is about the charge of racial discrimination in higher education.

With respect to the relative quality and quantity of programs offered, library volumes, and number of faculty with doctorates and degrees from major research institutions, differences do exist among the institutions. However, these differences do not appear to be associated with traditional institutional racial designations but simply correlate with whether an institution is comprehensive or noncomprehensive. Furthermore, there is no pattern in program quality among the noncomprehensive universities with respect to race. (Board Exhibit 205; Board Exhibit 206; Board Exhibit 224-228; Board Exhibit 238; Board Exhibit 241; Board Exhibit 244; Board Exhibit 247; Board Exhibits 258-261.)

3. Off Campus Program Offerings

The plaintiffs charge that the Black universities are kept in a secondary, segregated class by the off-campus centers set up by comprehensive universities near the campuses of the black universities, thus discouraging whites in the area from enrolling in the black institutions.

a. The University Center at Jackson

On February, 1951, the Board of Trustees approved the establishment by the University of Mississippi, in cooperation with Millsaps College, a private institution, of an off-campus center on the Millsaps campus in Jackson, Mississippi, the location of Jackson State University. Beginning in the Summer of 1951, the University of Mississippi offered credit and noncredit adult evening courses at the Millsaps Center. Enrollment at the Center during the period 1956 through 1966 ranged from a high of 975 in Fall, 1958 to a low of 284 in Fall, 1962. (U.S. Exhibit 913, stipulations 1, 2, 6.)

In April, 1961, the Board of Trustees authorized Mississippi State University to establish a resident center at Belhaven College, a private Presbyterian college in Jackson, Mississippi. During the 1964-65 academic year, 86 courses were offered and enrollment reached 960 at the Belhaven Center. In the Fall of 1964, the University of Southern Mississippi also began offering courses in cooperation with Mississippi State University at the Belhaven Center. (U.S. Exhibit 913, stipulations 8, 9, 12, 13.)

In May, 1964, the Executive Secretary of the Board of Trustees and the Director submitted to the Board of Trustees for its approval an agreement signed by officials of the University of Mississippi, Mississippi State University and the University of Southern Mississippi to establish a cooperative center in Jackson, offering an improved program of continuing education for residents of the immediate area. (Private Plaintiffs Exhibit 367, stipulation 17.) In December, 1966, the consolidation of the three Jackson extension centers was authorized by the Board of Trustees and early the next year the Mississippi University

Center in Jackson was established and was to be operated jointly by the three universities. The establishment of the University Center constituted a merger of the Jackson resident centers previously operated by the three universities. The granting of degrees at the University Center was not authorized at that time. (U.S. Exhibit 913, stipulation 21).

On May 18, 1972, the Board of Trustees voted to assign management responsibilities for the University Center to Mississippi State University, the University of Mississippi and Jackson State University. On September 21 of the same year the University Center was given degree-granting status. The plaintiffs alleged that the operation of this center near Jackson State University competes with Jackson State and tends to perpetuate the alleged segregated system. The Plan of Compliance of May, 1974, proposed to diminish the competition between Jackson State University and the programs offered by the historically white universities at the University Center. At present, Jackson State University enjoys on-campus privileges at the University Center and retains veto authority over all programs offered at the Center by the remaining institutions. Only limited graduate and unique offerings of the historically white institutions remain.

b. The Natchez Center

The University of Southern Mississippi's request to establish a resident center in Natchez, Mississippi, near Alcorn State University, was approved by the Board of Trustees on June 21, 1962. The Natchez Center enrolled its first students in the Fall of 1962. The curriculum was designed to offer adult students three years of undergraduate work at Natchez and contemplated a final year of studies—either at the

main campus in Hattiesburg or at any other Mississippi University upon transfer. During the Fall term of 1962, there were 198 students attending 14 classes at the Natchez Center. The Center is located approximately 40 miles from Alcorn State University. (U.S. Exhibit 912, stipulation 206; U.S. Exhibit 913, stipulation 204.)

The Board of Trustees subsequently assigned the management responsibility for the Natchez Center to the University of Southern Mississippi and approved the granting of baccalaureate degrees at the Center in the fields of elementary and secondary education and business administration—all of which were offered by Alcorn State University. The Board of Trustees, in 1972, instructed the presidents of the University of Southern Mississippi and Alcorn State University to meet and "establish the procedures whereby Alcorn [State University] will participate significantly in the instructional programs of the branch campus in Natchez." (U.S. Exhibit 913, stipulation 223.) The Plan of Compliance called for the joint participation of the two universities at the Natchez Center, making specific provision that Alcorn State University would teach 25% of the baccalaureate and master's degree courses offered at the Center. (U.S. Exhibit 913, stipulation 366.)

On Februray 17, 1977, the Board of Trustees transferred all responsibilities of the nursing program then offered by the University of Southern Mississippi at the Natchez Center to Alcorn State University. At present, the University of Southern Mississippi offers only noncredit extension courses at the Natchez Center.

c. The Vicksburg Resident Center

The Mississippi State University extension programs located at Vicksburg, Mississippi were recognized by the Board of Trustees as a resident center in May of 1952. (U.S. Exhibit 912, stipulation 733.) Prior to 1972, Mississippi State University offered extension classes at the Vicksburg Center as part of an in-service training program for Vicksburg public school employees. In October, 1979, Alcorn State University was authorized by the Board of Trustees to offer several courses at the Vicksburg Center. (U.S. Exhibit 912, stipulation 739.) The next year a consortium arrangement between the two schools was approved. (U.S. Exhibit 912, stipulation 737.) During the 1984-85 school year, 19 students were enrolled at the Vicksburg Resident Center, and 48 were enrolled in the center's engineering program. (U.S. Exhibit 914, page 15.)

E. Mississippi State University and Alcorn State University

The Land Grant Activities

Allegations were made by the plaintiffs that the state discriminatorily on the basis of race deprives Alcorn State University of funds and support in favor of Mississippi State University. Both of these institutions are land grant institutions. A land grant institution is defined as a college university entitled to financial and programmatic support from the federal government pursuant to a series of statutes originating with the Morrill Acts enacted by Congress in 1862 and 1890. The Morrill Act of 1862 allowed states to either sell federal land equal to 30,000 acres and place the proceeds into an endowment, or to receive scrip in lieu of land. The colleges so set up were to teach agricultural and mechanical arts, in addition to the traditional courses of study. The next major piece of legislation, entitled the Hatch-George Act, passed by Congress in 1887, (referencing the Morrill-Wade Act, authorized the appropriation of funds to support agricultural research. In 1914, Congress passed the Smith-Lever Cooperative Extension Act, providing for agricultural extension for farmers. These three congressional acts defined the land grant college to be an institution that provides instruction in agriculture and mechanical arts, research in agriculture through the experimental stations, and extension of knowledge to farmers through cooperative extension programs. In 1890, Congress passed the second Morrill Act which allowed states at their discretion to designate institutions to provide educational opportunities for blacks in agriculture.

Like many states, Mississippi has two land grant universities. Mississippi State University, established in 1878, as an agricultural mechanical arts college, has, since its inception, served as the institution designated by the state to receive federal funds pursuant to the first Morrill Act. Alcorn State University serves as the state's 1890 institution, that is, the land grant institution designated by the state to receive funds pursuant to the second Morrill Act.

In 1888, the state accepted the provisions of the 1887 Hatch Experimental Station Act and gave Mississippi State University the authority to receive and expend such funds. Alcorn State University was given no powers relative to the Hatch Act even though the congressional enabling legislation did not limit the state to granting this power only to Mississippi State University, but allowed for the inclusion

of Alcorn State University. (U.S. Exhibit 913; U.S. Exhibit 695(a), page 2.) In 1916, the Mississippi Legislature accepted the provisions of the Smith-Lever Cooperative Extension Act of 1914 and gave Mississippi State University the exclusive authority to receive and expend such funds. (U.S. Exhibit 912.) The State of Mississippi was not required by the federal enabling legislation to allocate this function equally to the 1862 and 1890 institutions. One year later, the experimental station and cooperative extension programs were placed under the administrative control of Mississippi State University. (U.S. Exhibit 695(a), page 3.) In 1942, Mississippi State University was authorized to acquire land through the experimental station that was later renamed the Mississippi Agricultural and Forestry Experimental Station (hereinafter referred to as "MAFES"). It was not until 1972 that Alcorn State University was authorized by state legislation to conduct a branch experimental station at Alcorn. (U.S. Exhibit 695(a), pages 4-5). The Alcorn Branch Experiment Station is funded by the State of Mississippi through MAFES. The Alcorn Branch Experiment Station is an organizational unit of MAFES which is in turn an organizational unit of Mississippi State University.

1. Instruction

Consistent with congressional directives, federal support for instruction in agriculture, while limited, is and has been equally divided between Alcorn State University and Mississippi State University. The state funds for instruction are allocated by the Board of Trustees according to a funding formula. The court finds that the state funding for instruction in agriculture is based on objective educational criteria,

and that the financial allocations to Alcorn State University and Mississippi State University are educationally sound and reasonable and not affected by racial considerations.

2. Research

The state's program of agricultural research is heavily concentrated at Mississippi State University. The genesis of this agricultural research activity was the Hatch Act of 1887, which provided for the creation of agricultural experiment stations in connection with the first Morrill Act colleges. Since 1888, by state statute and with federal concurrence, Hatch Act funds received by the state have been assigned to Mississippi State University for support of the state's experiment station. *See* Miss. Code Ann. § 37-113-17 (1972). The McIntyre-Stennis Act of October 10, 1962 (16 U.S.C. § 582a, *et seq.*) provided for a program of forestry research at agricultural experiment stations established under the first Morrill Act and the Hatch Act. Hatch Act funds, McIntyre-Stennis Act funds, and state matching funds are expended and accounted for by MAFES. MAFES, charged by federal and state policies to discover new knowledge for public benefit, is an integral part of Mississippi State University and yet is a separately funded entity. MAFES is funded at the state level by direct legislative appropriation and not by Board of Trustees allocation of general funds for higher education.

The United States Department of Agriculture (USDA), through its Cooperative State Research Service Division (CSRS), oversees the state research program. Federal appropriations are administered by CSRS which provides direction and control to state experiment stations throughout the country, admin-

isters research on a regional basis, and oversees a national system of agricultural research. No evidence was offered to suggest any discriminatory purpose, intent or effect in connection with Mississippi's role in agricultural research. For many years, MAFES has had a working relationship with faculty and administration in agriculture at Alcorn State University. Beginning in the late 1960's and formalized in 1971, MAFES and Alcorn State University joined in an effort resulting in the creation of the Alcorn Branch of MAFES. This was "forward" legislation serving as a model for other states.

Prior to 1967 the role of 1890 institutions was principally the teaching of agriculture and related subjects. In 1967 some limited research funds were earmarked by Congress for such institutions; these appropriations were increased in 1972 and were appropriated directly to the 1890 institutions under the 1977 Farm Bill (7 U.S.C. § 3101, *et seq.*). Section 1445 of the Farm Bill appropriated funds for agricultural research at 1890 colleges and simultaneously required the director of the state agricultural experiment stations and the research director of the 1890 institutions to jointly develop a comprehensive program of agricultural research for the state. Pursuant to this directive, MAFES and Alcorn State University jointly coordinated the development of a statewide comprehensive program; Alcorn State University also conducts its own research program and conducts research through its participation in the Alcorn Branch of MAFES. All officials directly involved in experimental station programs in Mississippi characterize the relationship between Mississippi State University and Alcorn State University as excellent. Alcorn State University has received limited state legislative appropriations for agricultural research since 1971.

3. Cooperative Extension

Cooperative extension is a cooperative venture among the USDA, land grant colleges, and county government, jointly financed by Congress, state legislatures, and county governments. Cooperative extension began with the Smith-Lever Act of May 8, 1914 (7 U.S.C. § 341, *et seq.*) and now encompasses four areas: agricultural and national resources programs; home economics or family living; 4-H youth development; and community development. The purpose of state cooperative extension is to help farm families improve their farm operations, to help farm-related businesses improve their operations, to help individuals gain knowledge to improve family living, and to improve rural community life. Since 1916, by state statute and with federal concurrence, Smith-Lever funds received by the state have been assigned to Mississippi State University. *See* Miss.Code Ann. § 37-113-19 (1972). The Mississippi Cooperative Extension Service (hereinafter referred to as "MCES"), an off-campus educational arm of Mississippi State University and separately funded by federal, state, and county governments, is the entity administering the Mississippi extension program. *See generally Wade v. Mississippi Cooperative Extension Service*, 372 F.Supp. 126 (N.D.Miss.1974). MCES is funded at the state level by direct legislative appropriation and not by Board of Trustees allocation of general funds for higher education.

The Extension Service of the USDA administers direction and control for the state program, including detailed plans of work and financial reports. No evidence was offered to suggest any discriminatory pur-

pose, intent or effect in connection with the state's role in cooperative extension work, that is, that access to cooperative extension programs is in any way influenced by racial considerations.

For many years, MCES has operated a branch at Alcorn State University. Beginning in 1970, Congress earmarked extension funds specifically for 1890 institutions, and under the 1977 Farm Bill certain federal funds were appropriated directly to those institutions. Section 1444 of the Farm Bill appropriated funds to 1890 colleges for extension, stipulating that the work to be carried out would be submitted as part of the State Plan of Work, and Congress directed that the state director of the cooperative extension service and the extension administrator of the 1890 institution jointly develop a comprehensive program of extension for the state. This in fact occurs between MCES and Alcorn State University with the result that, with MCES cooperation, Alcorn State University conducts its own extension work serving small-scale farmers in 13 counties and participates in the development of the state-wide comprehensive program. The Extension Service insures that the MCES and Alcorn State University extension programs are supplementary to one another rather than duplicative. Alcorn State University receives limited state legislative appropriations for cooperative extension work.

F. Funding of the Eight Universities

The plaintiffs allege in this suit that the black citizens are deprived of equal protection of the law because of discriminatory funding of the eight universities which favors the traditionally white universities over the traditionally black universities. State funding for general support of the basic educational and

operating activities of the eight universities is provided in the form of an annual lump sum appropriation to the Board of Trustees. It is the Board of Trustees' responsibility to allocate the general support appropriation among the respective institutions. Miss. Code Ann. § 37-101-15 (1972). The general support appropriation does not include funds for capital improvements, the Mississippi Agricultural and Forestry Experiment Station, or the Mississippi Cooperative Extension Service.

The Board of Trustees employs a budgeting equation referred to as the "funding formula" as the primary basis for determining the level of support for each university. Instruction-based, the Mississippi formula is tied to the educational activities of the universities. Such funding formulas are commonly used in higher education throughout the nation. The Board of Trustees has utilized the present instruction-based model since 1974.

Budgetary allocations to each university are based on the number of the previous year's student credit hours multiplied by the dollar rate per student credit hour with allowances made as to the field and level of study and mission of the institution. This figure, referred to as "investment in instruction," is deemed to be a specified percentage of an institution's total educational and general need with this percentage varying according to the mission of the institution. Following calculation of investment in instruction, other educational and general needs are determined, an appropriate inflation factor is applied to render the calculation current, and deductions are made for funds to be self-generated by the institutions, again according to mission.

The Board of Trustees determines investment in instruction by field of study for the reason that some disciplines and programs are less expensive to teach than other disciplines. Also, the Board of Trustees calculates instruction investment by level of study since lower level classes (freshman and sophomore) are less expensive than upper-level instruction (junior and senior) and substantially less expensive than graduate study. The institutional groupings are made according to mission not only because of such differences in program offerings but also due to significant distinctions in research and public service responsibilities.

In determining the cost of instruction at each of the institutions of higher learning, the Board of Trustees examines the number of programs and courses taught the previous year at a given institution, the current academic year, and the actual credit hours generated by those classes for each level of study. When the Board of Trustees receives this information from each university at the end of each academic year, Board employees then visit each campus and audit the courses to verify the accuracy of the credit hour activity report. From this information the Board of Trustees determines what the cost per credit hour is at each institution. Once cost per credit hour is established in each of the various disciplines for each level of study, the institutions are grouped by mission and then the average cost per credit hour for each group is calculated.

There are three groups for the purposes of making average cost estimates. Group I consists of the comprehensive universities. Group II is the urban university, Jackson State University. Since there is only one university with that mission designation, the

Board of Trustees decided to include also the University of Southern Mississippi for the purposes of establishing an average. The Board of Trustees justifies the inclusion of the University of Southern Mississippi with Jackson State University on the basis that it is the closest to Jackson State University in size in terms of number and level of programs. Group III includes the remaining institutions, that is, the regional universities, including Alcorn State University, Delta State University, Mississippi Valley State University, and Mississippi University for Women. An average group rate for each of these groups is thus determined and then applied to the total credit hours taught at the individual universities. Multiplying total credit hours taught times the average group rate will yield the cost in instruction at each university.

The formula group rate for instruction, as determined by the formula, is then set at a certain percentage of total need. Cost for instruction is said to represent 45% of the total need for the comprehensive universities, 47.5% for the Group II institutions, and 50% for the Group III institutions. This amount is then expanded by a certain percentage in order to cover all other functional areas, such as research, public service, student services, operations, and maintenance, and institutional support. Again, this percentage is set according to mission classification. Thus, cost in instruction for Group I institutions, representing 45% of total need, is expanded by 55% to cover the other functional areas. At the Group II institution, the cost in instruction is expanded by 52.5% and the Group III institutions' cost in instruction is then expanded by 50%. The resulting figure is then expanded again to take into account inflation since the figures used in calculating institutional need are

based on the previous year's data. Finally, each institution is expected to self-generate a portion of its budget. Group I institutions are expected to generate approximately 32% of their total need; these amounts are to be derived from student fees, other sales and services of educational activities, and charges for public service activities. The Group II institution is expected to self-generate 30% of its budget needs, and the Group III institutions are expected to self-generate 26% of their budget needs. Deducting the self-generated amount as described above will yield the total request for appropriations for the particular institution for the upcoming academic year.

The court heard expert witnesses testify pro and con on the issue of whether the present funding formula unconstitutionally discriminates against the predominantly black universities and therefore against the plaintiffs themselves. Studies have shown that the quality of educational institutions has not risen dramatically until they have attained considerable size—usually surpassing 10,000 full-time students. Instead of trying to divide more evenly the limited annual appropriation received by the Board of Trustees, it appears to the court that the Board would do well to build the quality and size of one of the comprehensive universities to that of universities in adjacent states which have created one leading flagship institution for the state, e.g., University of Arkansas, University of Tennessee, and Louisiana State University. Then the students of the state, black and white, would have educational opportunities available to them from at least one leading research university which do not now exist with scattered competing institutions clamoring for larger parts of the limited lump sum appropriation. The state is not required by the United States Constitution to maintain even a single university, and

a fortiori, not eight. Of course if a state chooses to create and maintain public universities it must fund and administer them without regard to race or sex. *MUW v. Hogan*, 458 U.S. 718, 102 S.Ct. 3331, 73 L.Ed.2d 1090 (1982). The establishment of a large, comprehensive, research institution which is open to all the qualified citizens of the state without consideration of race is a course of action not in contradiction to the Constitution or the laws of the United States. Politically, to channel the amount of money from the annual appropriation necessary to develop and support a flagship university, although economically and educationally advantageous to the state, would be an unpopular action with some alumni and in the areas served by the other universities if it would decrease the funding of the other seven. The Board of Trustees has recognized that the students of this state would have higher quality educational opportunities if funds are taken from institutions whose continued funding is economically illogical and use them in improving the larger comprehensive institutions;[3] however, the legislature has not agreed on a course of action in which the economic and educational advantages clash with the political considerations.

The funding formula does not treat the predominantly black institutions inequitably. Mississippi Valley State University, for example, benefits substantially under the institutional groupings. The grouping of Mississippi Valley State University with the other three regional universities, particularly Delta State University, has given Mississippi Valley

[3] The Board announced its decision in 1986 to close Mississippi University for Women, Mississippi Valley State University, the Veterinary School at Mississippi State University, and the Dental School at the University of Mississippi.

State University significantly higher funds for instruction than the sums actually expended for instruction. Conversely, Delta State University has been consistently funded at rates below sums actually expended for instruction. (Board Exhibits 361-364.) Jackson State University has also greatly benefited from having been grouped with the University of Southern Mississippi. (Board Exhibits 361-364.)

The Board of Trustees has on occasion departed from the pure formula allocation. Such departures, however, have benefited the predominantly black institutions. For the period 1981-82 through 1986-87, Mississippi Valley State University received $1,518,923.00, Alcorn State University received $1,101,167.00, and Jackson State University received $552,759.00 more than otherwise would have been received under a pure formula allocation. During the same time period Mississippi State University received some $4,134,846.00 less, and the University of Southern Mississippi $3,775,936.00 less than called for by the formula. (Board Exhibit 360.)

Comparing Mississippi institutions with their peers in surrounding states, the court finds that the three comprehensive universities were under-funded by more than 15% when compared to institutions of similar mission in the Southeast region. Jackson State University, however, was 9% above the regional average for like institutions, and the four regional institutions in Mississippi were more than 25% above the regional average for institutions of comparable mission in other states. Similar patterns have prevailed in Mississippi at least over the past decade. The plaintiffs have argued and alumni have called for a change in the funding of the universities which would allow the smaller predominantly black

universities to "keep up" with or "compete" with the larger predominantly white universities. The court notes that even respected newspapers have editorialized in favor of this position.[4] Such an argument is misplaced. A regional institution has a mission, a purpose, that is not designed for the "keeping-up" with or "competing" with the comprehensive universities. The funding allocation to the Board of Trustees is of a limited amount. The comprehensive universities must of necessity receive the larger amounts if they are to remain capable of carrying out their missions. Authorities advocate that they should receive more dollars per student. As long as the larger, comprehenisve universities are open to all qualified students, both black and white students gain.

G. Facilities

From 1964-65 to 1984-85, statewide full-time equivalent enrollment at the eight universities nearly doubled to a peak of approximately 45,000 students. (U.S. Exhibit 836(b).) Enrollment growth was accompanied by a substantial increase in campus space and plant investment. (U.S. Exhibit 835, page 27; U.S. Exhibit 836(e); U.S. Exhibit 836(1).) The state's response to the increase in enrollment over this twenty-year period was inconsistent in the early years in the sense that a disproportionate share of the funds allocated for faculty expansion was received by the historically white institutions. In more recent years, significant expenditures have been made to increase the physical facilities at the historically black institutions. Despite having only approximately 25% of the total system-wide enrollment, the his-

[4] *See The Clarion Ledger, Jackson Daily News*, August 21, 1987 Editorial.

torically black institutions received 39% of the state appropriations from 1970 through 1980 for new construction, and from 1981 through 1986 received 51% of such funds. (Board Exhibit 304, page 1; Board Exhibits 326-330; Board Exhibit 344.) During the period 1981 through 1986, the state building commission allocated over 30% of all major repair and renovation appropriations to the predominantly black institutions. (Board Exhibits 331-338.)

The expendituure of substantial funds by the State of Mississippi in response to the increasing student enrollment in the higher education system resulted in a significant expansion of campus facilities at each institution. Campus space may be measured either in terms of gross square feet or net assignable square fee. Gross square feet is an architect's term measuring the outline of the floors of a building and adding these to reach a total square footage. Net assignable square feet is a smaller number than gross square feet, representing the amount of space available for functional purposes and would exclude vestibules, halls, closets, etc. The total increases in campus gross square feet from 1960-61 to 1984-85 range from 682,000 gross square feet at Delta State University to almost 3.3 million gross square feet at Mississippi State University. During the first five years (1960-65), Alcorn State University, Jackson State University, and the University of Southern Mississippi achieved a growth rate of 100%. In the most recent five-year period (1980-85), additions to plant range from 0 to 5 percent, with the exception of Jackson State University, which achieved a growth rate of 21.5 percent. Overall, space on the eight university campuses expanded from 6.5 million gross square feet in 1960 to 18.2 million gross square feet today and replacement value (in constant dollars) increased from ap-

proximately $200,000,000.00 to over $920,000,000.00. (U.S. Exhibit 836.)

Perhaps the most useful indicator of facilities resources is the amount of functional or net square feet of space per full-time equivalent student. The University of Southern Mississippi, a historically white comprehensive institution, has the smallest amount of net square feet per full-time equivalent student. When all eight institutions are ranked, the historically black institutions rank second, third, and seventh in total square feet per full-time equivalent. (U.S. Exhibit 836(k).) From the way in which the eight Mississippi universities fall within the rankings, the court finds that there is no correlation between the amount of campus space and the historical racial designation of the institutions.

Over the past 25 years, the historically black institutions consistently had a higher increase than did the historically white institutions in gross square feet and net square feet added. The historically black institutions experienced increases in total space of 381% while the historically white institutions experienced increases of 150%. The historically black institutions increased by 76% in gross square feet per student while historically white institutions increased 26%.

The physical plant of the higher education institution is a basic tool to facilitate its educational programs. There is a close relationship between facilities and the development or expansion of academic programs. A recent publication by the Carnegie Foundation reported that 62% of the students surveyed stated that facilities were the most important factor in their interest in an institution. The particular mix of facilities found at a given institution defines its "character." Objectively, one might include such fac-

tors as the age and construction type and design of campus buildings, their condition, ease of access, extent of land holdings, ability to expand, and visual images in defining institutional character. The subjective factors include the opinions of the academic community and the media and the opinions of parents, alumni, and students.

The character of the historically black institutions in 1954 was acknowledged to be inferior or unequal to that of the historically white institutions at that time. The facilities at the historically black institutions in 1954 were deemed to be adequate for undergraduate education. In 1986, the character of Jackson State University changed to that of what would be expected at a research university with limited ability to conduct research at the graduate level. With respect to the present-day character of Alcorn State University and Mississippi Valley State University, the court finds facilities commensurate with institutions with an undergraduate mission.

Mr. Richard Dober of Cambridge, Massachusetts, a noted lecturer and author of over fifty books on campus planning and adviser to China on educational facilities, studied the physical facilities of the eight institutions in Mississippi. Mr. Dober testified he found no correlation between the racial identity of the institutions and the quality of the facilities at the institutions and the court so finds.

H. Governance

The Board of Trustees of the Institutions of Higher Learning

The Board of Trustees consists of thirteen members appointed by the governor, with the advice and consent of the Mississippi Senate. Twelve members are

appointed to twelve-year terms, in groups of four, every four years. Ten of the twelve members are to be appointed from and must be residents of the several designated districts (Congressional or Mississippi Supreme Court Districts), and two are to be appointed from the state at large. The thirteenth member is appointed "for the University of Mississippi . . . and shall have a vote only in matters pertaining to the University. . . ." This member, known as the Trustee for the LaBauve Fund, serves a four-year term.[5] (Miss. Const. Sec. 213-A (1890); U.S. Exhibit 1, page i; U.S. Exhibit 636, page 1). There are no stated written criteria for selection of board members. Those appointed to serve on the Board of Trustees have represented various professional backgrounds.

No black person was appointed to the Board of Trustees from 1932 through 1971. The first black person to serve on the Board of Trustees, Dr. Robert Walker Harrison, was appointed in 1972. Since that appointment, three additional blacks have been appointed and three blacks presently serve on the Board. Elected by the membership of the Board of Trustees, blacks have served as president and vice-president of the Board. Blacks have also served as chairmen of numerous Board committees. A close working relationship and strong sense of collegiality exist among white and black Board members.

The Board of Trustees selects an executive secretary who, *inter alia*, employs necessary professional

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[5] H.Con.Res. 19 (1987) (Miss.) (H01.H87R193.AHS) proposed to amend Section 213-A, Mississippi Constitution of 1890, by deleting the provision for the LaBauve Trustee. This proposal was ratified in the November, 1987 election thereby concluding the abolishment of this trustee position.

staff, subject to Board approval. (U.S. Exhibit 636, page 8.) The Board's first two black professional staff members were not employed until 1974. (U.S. Exhibit 936, page 36.) At present, the staff responsible for the day-to-day operations of the Board of Trustees consists of twenty-three persons, six of whom are black. Moreover, four of the six blacks on this staff are professionals. Apart from the maintenance staff, the other major staff segment employed by the Board of Trustees is responsible for overseeing the guaranteed student loan program. This group consists of approximately fifty persons, seventeen of whom are black.

III. Conclusions of Law

A. General

The private plaintiffs' claims are based upon the Thirteenth and Fourteenth Amendments, 42 U.S.C. § 1983, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, 34 C.F.R. Part 100 (administrative regulations effectuating Title VI), and 42 U.S.C. § 1981. *See Guardians Association v. Civil Service Commission*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983) (private cause of action implied in Title VI). The claims of the United States[6] are based upon the Fourteenth Amendment and Sec-

[6] The Attorney General of the United States, upon receipt of a referral from the Department of Education, has the authority to sue on behalf of the United States to enforce statutory requirements and contractual assurances of nondiscrimination made pursuant to the operation of federally assisted programs administered by public institutions of higher education. Section 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1; *United States v. Marion County School District*, 625 F.2d 607, 611-13 (5th Cir.1980).

tions 601 and 602 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d and 2000d-1.[7]

The defendants do not dispute that Mississippi law forbade interracial education at the university level up to the time of the decision in *Meredith v. Fair*, 305 F.2d 343 (5th Cir.1962). Defendants' racially segregative policies at that time encompassed the areas of: (1) student enrollment, (2) maintenance of branch centers by the historically white universities in close proximity to the historically black universities, (3) employment of faculty and staff, (4) provision and condition of facilities, (5) allocation of financial resources, (6) academic program offerings, and (7) racial composition of the governing board and its staff. The fundamental issue before the court at this time, however, is whether the defendants are currently committing violations of the Thirteenth and Fourteenth Amendments, Title VI and 42 U.S.C.

[7] As recipients of federal financial assistance, the State of Mississippi and its agencies exercising management and control of the public colleges and universities are prohibited from discriminating against any individual on the basis of race, color or national origin. Section 601 of Title VI essentially prohibits discrimination which violates the Equal Protection Clause of the Fourteenth Amendment. *Regents of the University of California v. Bakke*, 438 U.S. 265, 281-87, 98 S.Ct. 2733, 2743-46, 57 L.Ed.2d 750 (opinion of Powell, J.); *id.* at 327, 98 S.Ct. at 2767 (opinion of Brennan, J.) (1978). Section 604 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-3, does not bar the United States from maintaining an action under Title VI that is, in part, aimed at eliminating the segregation of faculties at institutions of higher learning. *Caulfield v. Board of Education of the City of New York*, 632 F.2d 999, 1005 (2d Cir.1980); *United States v. Jefferson County Board of Education*, 372 F.2d 836, 883 (5th Cir.1966), *aff'd en banc*, 380 F.2d 385 (5th Cir.), *per curiam cert. denied*, 389 U.S. 840, 88 S.Ct. 67, 77, 19 L.Ed.2d 103, 104 (1967).

§ 1981. This case differs in an interesting way from the usual lawsuit. The usual complaint charges that certain facts exist at the time of filing suit and the evidence at trial is retrospective—that is, it looks back to events that allegedly occurred prior to the filing. In this case the issue is over what the facts are at the time the case is being tried, 12 years after the filing of the case.

At the very least, a state choosing to operate a system of public higher education has the duty to adopt and implement good faith, racially nondiscriminatory policies and practices. Black applicants must be admitted to public institutions of higher education "under the rules and regulations applicable to other qualified candidates." *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413, 414, 76 S.Ct. 464, 465, 100 L.Ed 486 (1956); *Sweatt v. Painter*, 339 U.S. 629, 636, 70 S.Ct. 848, 851, 94 L.Ed. 1114 (1950); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 352, 59 S.Ct. 232, 237, 83 L.Ed. 208 (1938). Where a state has previously maintained a racially dual system of public education established by law, it assumes an "affirmative duty" to reform those policies and practices which required or contributed to the separation of races. *Milliken v. Bradley*, 433 U.S. 267, 290, 97 S.Ct. 2749, 2762, 53 L.Ed.2d 745 (1977). *See also Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971). At the elementary and secondary education level the courts have defined the affirmative duty to include also the elimination of all "vestiges" or effects of the former *de jure* segregated system. *Green v. School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

The courts are unanimous in holding that the affirmative duty to dismantle a racially dual structure

in the elementary and secondary levels applies also in the higher education context. *See, e.g., Geier v. University of Tennessee*, 597 F.2d 1056 (6th Cir. 1979); *United States v. State of Alabama*, 628 F.Supp. 1137 (N.D.Ala.1985);[8] *Norris v. State Council of Higher Education*, 327 F.Supp. 1368 (E.D.Va.) (three-judge court), *aff'd, sub nom., Board of Visitors of the College of William & Mary v. Norris*, 404 U.S. 907, 92 S.Ct. 227, 30 L.Ed.2d 180 (1971); *Lee v. Macon County Board of Education*, 317 F.Supp. 103 (M.D.Ala.1970) (three-judge court), *aff'd in material part*, 453 F.2d 524 (5th Cir. 1971); *Alabama State Teachers Association (ASTA) v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D.Ala.1968) (three-judge court), *aff'd*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969). There is, however, substantial disagreement on the question of whether the scope of the duty is as broad in the higher education context as has been defined and applied in the elementary and secondary education context.

Several courts, relying on the Supreme Court decision in *Green v. School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), have concluded that some level of racial mixture at previously segregated institutions of higher learning is not only desirable but necessary to "effectively" desegregate the system. *See Geier v. Alexander*, 801 F.2d 799 (6th Cir.1986). Others, relying on the Fifth Circuit authority *Alabama State Teaches Association ("ASTA") v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D.Ala.1968), maintain that a state's affirmative duty is satisfied

[8] Overruled by 11th Circuit, 828 F.2d 1532 (11th Cir.1987), but not on merits of case.

by the good faith adoption of race-neutral policies and procedures. *See Artis v. Board of Regents of the University System of Georgia*, No. CV479-251 (slip op.) (S.D.Ga. February 2, 1981) (unpublished).

Upon consideration of the pertinent case law the court is of the opinion that the more narrowly defined duty set forth in *ASTA* should control in this case. The Supreme Court in *Green* struck down a "freedom of choice" plan that was designed to desegregate elementary and secondary schools but which had failed to appreciably alter the racial identifiability of the schools. Focusing on the results of official actions rather than on the apparent presence or absence of good faith underlying such action, the Court required affirmative steps, including the establishment of mandatory attendance zones, "which promise realistically to convert promptly to a system without a 'white' school and a 'negro' school, but just schools." *Green*, 391 U.S. at 442, 88 S.Ct. at 1696. As is apparent from a contextual reading of *Green* and subsequent Supreme Court and lower court decisions considering the nature and extent of the state's duty to desegregate at the elementary and secondary level, the affirmative duty as delineated in these cases rests upon the traditional power vested in local school authorities to dictate attendance patterns in compulsory elementary and secondary school systems, that is, to order certain students to attend certain schools. The circumstances in the higher education field, however, are different.

In *ASTA*, plaintiffs challenged a proposed expansion of a historically white higher education institution located in close proximity to a historically black institution alleging that the state officials overseeing the proposed expansion failed to adequately consider

how the expansion could be carried out so as to maximize integration and the enhancement of facilities and programs found at the historically black school. 289 F.Supp. at 789. The court, however, rejected plaintiffs' arguments that school officials were under an obligation to choose policy alternatives which maximized the integration of component institutions. Based on what it perceived to be certain qualitative differences existing between elementary-secondary schools and institutions of higher learning, the court accordingly refused to adopt the proposition that the scope of the affirmative duty in higher education extended as far as in elementary and secondary education. *Id.* Instead, the *ASTA* court concluded that the affirmative duty to disestablish or "dismantle" a dual higher education system is fulfilled by the adoption and implementation of "good faith nondiscriminatory policies." *Id.* at 789-90. Writing for the three-judge court, Judge Frank M. Johnson stated:

> Higher education is neither free nor compulsory. Students choose which, if any, institution they will attend. In making that choice they face the full range of diversity in goals, facilities, equipment, course offerings, teacher training and salaries . . . . From where legislators sit, of course, the system must be viewed on a statewide basis. In deciding to open a new institution or build a branch or expand an existing institution, and in deciding where to locate it, the legislature must consider a very complicated pattern of demand for and availability of the above-listed variables, including, also, impact on the dual system. We conclude that in reviewing such a decision as to determine whether it maximized desegregation we would necessarily be involved,

> consciously or by default, in a wide range of educational policy decisions in which courts should not become involved.

ASTA, 289 F.Supp. 788. The court concluded by stating that:

> [A]s long as the State and a particular institution are dealing with admissions, faculty and staff in good faith the basic requirement of the affirmative duty to dismantle the dual system on the college level, to the extent that the system may be based on racial considerations, is satisfied.

Id. at 789-90. The Supreme Court affirmed by *per curiam* decision *ASTA*'s holding that good faith implementation of nondiscriminatory policies satisfies the state's affirmative duty to desegregate a higher education system. *ASTA*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969). *See also Lee v. Macon County Board of Education*, 453 F.2d 524, 527 (5th Cir.1971) (observing that the principles of public school desegregation have not been applied to institutions of higher learning in same manner as have been applied to elementary and secondary schools).

The *ASTA* court made a distinction between the state's duty in the higher education field as distinguished from the secondary and elementary education areas. This distinction was buttressed by the Supreme Court's recent decision in *Bazemore v. Friday*, 478 U.S. ——, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986). *Bazemore* in part involved a fourteenth amendment challenge of the North Carolina Extension Service 4-H and Homemaker Clubs which had been racially segregated by law prior to 1965. 106 S.Ct. at 3012. Even though the clubs continued to

exhibit marked racial imbalance, the Court found that the Extension Service had "disestablished segregation" by adopting a policy allowing all club members to freely choose which club they wished to join. 106 S.Ct. at 3013. The Court distinguished *Green*'s condemnation of "ineffective" freedom of choice plans in local public schools on the grounds that "while school boards customarily have the power to create school attendance areas and otherwise designate the school that particular students may attend, there is no statutory or regulatory authority to deny a young person the right to join any club he or she wishes to join." *Id.* Thus, *Bazemore* draws a clear distinction between elementary and secondary education systems and those systems where admissions are traditionally determined by voluntary choice. In the latter context, the affirmative duty to desegregate does not contemplate either restricting choice or the achievement of any degree of racial balance.

The court perceives no inconsistency with respect to the Supreme Court decisions *Green* and *Bazemore* and the *ASTA* decision. These decisions stand in harmony for the proposition that the scope of the affirmative duty to disestablish a former *de jure* segregated system of education is to be defined in accordance with the degree of choice individuals enjoy as to whether they wish to attend college at all and, if so, which one. Where "choice" is traditionally controlled by the state, in elementary and secondary education, the state is required to exercise its control in a way which maximizes the racial integration of component institutions. Although the continued racial identifiability of educational institutions per se is not violative of the Constitution of Title VI, *see Dayton Board of Education v. Brinkman*, 433 U.S.

406, 419-20, 97 S.Ct. 2766, 2775, 53 L.Ed.2d 851 (1977), the question of whether the state has fulfilled its affirmative duty in the elementary and secondary sphere is determined by assessing the results of state policy, that is, whether the policies implemented in fulfillment of the affirmative duty have substantially affected the racial mix of the schools involved. The overwhelming emphasis on the results of official policy in this context is appropriate since direct official control over attendance decisions can be expected to produce an immediate tangible impact on racial attendance patterns.

In the college and university education context, however, where individuals have traditionally enjoyed free choice as to whether and when to attend school, the courts have considered it inappropriate to require state officials to maximize integration when assessing affirmative action vis-a-vis the affirmative duty to disestablish a former *de jure* segregated system. The wisdom of this approach does not rest solely upon traditional notions, however. It also rests on the qualitative distinctions existing between the post-secondary and the elementary-secondary education systems. Elementary and secondary schools in a single district tend to be fungible in the sense that they generally strive towards uniformity in offerings, facilities and services. The opposite is true in higher education. A special emphasis is placed upon the relative uniqueness of the separate institutions comprising a public system of higher education. Indeed, the uniqueness of institutions which results from the confluence of course offerings, services, size, location, faculty and students found at each institution, explains why freedom of choice is so valued and why the courts have not required the restriction of student

choice in higher education. Thus, given that the state is not obligated to control student choice in fulfilling its duty to disestablish a former *de jure* segregated system of higher education, it would be inappropriate to emphasize the relative degree of integration of each institution in determining whether the state has satisfied its duty. While student enrollment and faculty and staff hiring patterns are to be examined, greater emphasis should instead be placed on current state higher education policies and practices in order to insure that such policies and practices are racially neutral, developed and implemented in good faith, and do not substantially contribute to the continued racial identifiability of individual institutions. *See Brinkman*, 433 U.S. at 413, 97 S.Ct. at 2772; *Milliken*, 418 U.S. at 744-45.

B. Student Admission, Recruitment and Retention

1. Use of the ACT Assessment

Should the Pre-Med Student Have Lower Entrance Requirements Than the Tight End?

The private plaintiffs and the United States claim that the defendants continue to deny students equal access to the system of higher education on the basis of race. This challenge centers principally on the use of the ACT test scores as a requirement for admission to each of the eight institutions. The plaintiffs argue that the evidence shows the Board of Trustees adopted and has continued to use the ACT testing requirement for the purpose of minimizing the numbers of black persons eligible to enroll in the system of higher education and segregating black persons within that system, in violation of the Fourteenth Amendment and Title VI, 42 U.S.C. § 2000d et seq. *See, e.g.*,

Washington v. Davis, 426 U.S. 229, 239-40, 242, 96 S.Ct. 2040, 2047-48, 2049, 48 L.Ed.2d 597 (1976).

Plaintiffs argue that the analytical factors delineated in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-68, 97 S.Ct. 555, 564-65, 50 L.Ed.2d 450 (1977), applied to the facts in the instant case, demonstrate the discriminatory intent on the part of the Board of Trustees with respect to both the adoption of the ACT requirement and its continued use. Plaintiffs contend that two of the *Arlington Heights* factors in particular—an evaluation of the historical background of the decision and the specific sequence of events leading up to the challenged decision—support the conclusion that the ACT standard was originally adopted by the Board of Trustees in 1962 after James Meredith had applied for admission to the University of Mississippi, in order to minimize the desegregation of the historically white institutions. As support for their contention that the continued use of the ACT requirement is motivated by discriminatory intent, plaintiffs note "that the [standard] bears more heavily on one race than another." *Washington v. Davis*, 426 U.S. at 242, 96 S.Ct. at 2049. Further, it is contended that the employment of differing ACT requirements at each of the various institutions in effect channels those black persons eligible for admission to historically black institutions, thereby perpetuating the racial status quo. It is also argued that the use of the ACT minimum score requirement is marked by "substantial departures," *Arlington Heights*, 429 U.S. at 267, 97 S.Ct. at 564, in the sense that the Board of Trustees has used the ACT test scores in a manner inconsistent with the policies of the American College Testing Program, which recommends the consideration of high school grades in conjunction with the

ACT test scores in making admission decisions, with the effect of reducing the numbers of blacks who might otherwise be eligible for admission if grades were included.

We start with the proposition that no educational requirement is permissible if adopted and maintained for a discriminatory purpose. *See Arlington Heights*, 429 U.S. at 256, 97 S.Ct. at 559; *Washington v. Davis*, 426 U.S. 238, 96 S.Ct. at 2046. While the circumstances surrounding the Board of Trustees' adoption of the ACT assessment in 1962 lead this court to find that the ACT assessment was in fact adopted ". . . because of, not merely in spite of its adverse effects upon an identifiable group," *Personnel Administrator v. Feeny*, 442 U.S. 256, 279, 99 S.Ct. 2282, 2296, 60 L.Ed.2d 870 (1979), much time has passed since 1962 and much has transpired with respect to the Board of Trustees' student admissions policies. First, it should be noted that the Board of Trustees did not adopt specific ACT test score minimums for the institutions of higher learning in 1962. It was not until May of 1976, effective the Fall of 1977, that the Board of Trustees established minimum ACT scores for college admission. The policy stipulated that no student was to be admitted to any institution as a first-time freshman who failed to achieve an ACT score of 9. The policy at that time also provided that those institutions presently requiring higher minimum ACT scores were to continue those requirements. The circumstances surrounding the adoption of this minimum ACT test score in 1976, however, do not indicate that this policy was adopted for discriminatory purposes. It is apparent to the court that legitimate questions were raised at that time with respect to the level of scholastic preparation of entering freshmen.

The court also finds that the Board appropriately justified its varying ACT minimum test score requirements within the university system by acknowledging the potentially deleterious impact upon institutional enrollments, particularly at the three historically black institutions, if a uniform score were adopted. It was clear that setting an ACT minimum score of 15 for the historically black institutions would decimate existing student enrollments. Although conceding that an ACT score of 9 was a shockingly low level of achievement for university-bound students, the Board of Trustees recognized that the realities of the student body composition at that time required that a low score be utilized at those universities. During the past several years, the gap which had existed between the historically white and the historically black institutions as to ACT minimum scores has narrowed considerably.

The court also finds adequate justification for the Board of Trustees' decision not to adopt high school grades as a component of the admission requirements. Evidence was presented at trial which indicated that the Board of Trustees was, and continues to be, concerned about grade inflation and the lack of comparability in grading practices and course offerings among Mississippi's diverse high schools. Furthermore, the ACT organization advised the Board of Trustees in 1976 that although inclusion of grades with ACT test scores was a sound indicator of both level of preparation and likelihood of success at the freshman level in college, the use of the ACT test score alone was also a valid indicator. ACT's position remains unchanged.

There have been a number of other revisions of the admission requirements which, given the circumstances existing during such times, indicate that the Board of Trustees was in fact responding to legitimate educational and fiscal concerns and not to the relative racial mix at the historically white institutions. Most recently, and consistent with a concern regarding the academic readiness of entering freshmen, the Board of Trustees in July, 1982 adopted high school course requirements for implementation in the Fall of 1986. There is strong evidence that the adoption of the core curriculum requirement has in fact raised the level of academic preparation of entering freshmen as measured by an improvement on the ACT test scores of those students completing the core curriculum requirements.

The court finds that the current admission policies and procedures, including the particular use to which the ACT assessment is put, were not adopted for racially discriminatory purposes and are reasonable, educationally sound, and racially neutral. There can be no doubt that the ACT test score is a reliable instrument frequently used as an integral component of college admission standards. As previously noted, every state in the United States has at least one institution making use of the ACT data and it is the predominant admission test in some 28 states. In addition to providing a highly relevant status report on student school achievement, the ACT, as a standardized instrument, enables Mississippi educators to assess uniformly the level of academic preparation of students graduating from high schools across the state. In addition, the positive correlation between performance on the ACT and academic achievement during the freshman year at Mississippi universities is well established.

While average ACT scores do differ among Mississippi black students as contrasted with Mississippi

white students, the Board-established minimum ACT scores are extremely modest levels of required performance. Nationally, 95% of all ACT tested students score 9 or above and over 70% of all students score 15 or above. Nine out of every ten ACT tested students in Mississippi, including 80% of all black students, score 9 or above on the ACT; and students who achieve a 9 on the ACT English and social studies tests are only reading at a ninth grade level. Indeed, the Board of Trustees' admission standards are even more modest than the recently adopted NCAA Proposition 48 which requires achievement of specified ACT composite scores in order for student athletes to be eligible to participate in athletics. Beginning in August, 1988, all student athletes must achieve an ACT composite score of 15 and at least a 2.0 grade point average on a 4.0 scale. Unlike the Board's standards, there are no exceptions to this 15 requirement and, further, the Board does not require students to achieve the 2.0 grade point average. The court is of the opinion that it would be regressive to order the universities of this state adopt an admissions policy in which entering pre-med and pre-law students have lower admission requirements than a physical education student who is on scholarship to play tight end.

In the absence of a showing of intentional discrimination, the standards under the Fourteenth Amendment and Title VI do not require the state to modify or lower valid admission or other educational standards even if those standards have a disparate impact on minority or other-race students and even if there exist other reasonable alternatives with less disparate impact. As the Fifth Circuit Court of Appeals has held in *LULAC v. Texas*, 793 F.2d 636, 649 (5th Cir. 1986), a case involving an attack on admission stand-

ards for a teacher education program in a formerly segregated higher education system, "even a state that formerly practiced de jure segregation is not required by the [Equal Education Opportunity] Act to suspend or lower valid academic standards." Similarly, a Title VI violation is established either under the standard "disparate impact" analysis or the affirmative duty outlined above, "only if the challenged test is not a reasonable measure of a bona fide educational requirement." *Id.* The rationale for this rule is simple. "If the [challenged educational standard] is valid, enjoining its use would not, in any meaningful way, counteract the effects of past segregation, but might simply serve to perpetuate a dual standard," *id.*, by reinforcing the stereotype that minority students cannot satisfy generally applicable educational standards and by diluting educational benefits offered to all students, black and white. Indeed, if valid academic standards were lowered to eliminate a disparate impact, this would simply serve to lock in, not correct, any educational deficiencies suffered by black children in elementary and secondary schools, by "celebrating and perpetuating the hollow certification that accompanied black graduation pre-*Brown v. Board of Education*," *Deborah P. v. Turlington*, 654 F.2d 1079, 1085 (5th Cir.1981) (Tjoflat, J., dissenting from denial of rehearing en banc).

If Title VI is construed to prohibit the establishment of reasonable academic standards simply because they tend to reinforce the racial identifiability of previously segregated colleges, it might well be argued that formerly black schools are obliged to raise academic standards if this reduces black participation or increases white representation. No such rule, however, can be derived from the Constitution

or Title VI. In addition, the Supreme Court has consistently emphasized that courts "are particularly ill-equipped to evaluate [academic decisions]" and that this consideration "warn[s] against any such judicial intrusion into academic decision-making." *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 92, 98 S.Ct. 948, 956, 55 L.Ed.2d 124 (1978).

As to plaintiffs' argument that current admission policies in effect "channel" black students to the historically black universities, the only pertinent data presented at trial revealed that the utilization of the ACT composite score of 15 as a requirement for admission at the historically white institutions and the use of an ACT composite score of 13 at the historically black institutions do not substantially contribute to the continued racial identifiability of Mississippi universities. The historically black institutions are not predominantly black because black students who first preferred to attend a historically white institution were "channeled" to black institutions after failing to achieve a test score of 15. As previously pointed out, practically all the black students who applied to predominantly white universities in the Fall of 1986 were accepted.

Finally, private plaintiffs also suggest that the current admission standards perpetuate the prior intentional discrimination at the elementary and secondary school levels. Plaintiffs cite *Geier v. Alexander*, 801 F.2d 799 (6th Cir.1986) for the proposition that the Board of Trustees must "compensate" for unequal educational opportunities at lower educational levels. Although *Geier* alluded that a district court's consideration of conditions in public elementary and secondary school systems was appropriate in fashioning

a remedial plan, that is a far cry from establishing a *duty* to consider the conditions found at the elementary and secondary levels. Further, the Fifth Circuit's holding in *LULAC* is clear that higher education systems are under no legal obligation to "compensate" or "remedy" constitutional infirmities existing at the elementary and secondary school levels. *LULAC*, 793 F.2d at 647.

Given the foregoing, the court finds that current Board admission policies in force among the institutions of higher learning, including the use of the ACT test scores in conjunction with the core curriculum requirement, are inherently reasonable and educationally sound after giving due consideration to the discriminatory taint attached to ACT requirements by the Board of Trustees' initial adoption of the ACT assessment in 1962.

2. Student Recruitment and Retention

The defendants have for a number of years made well known their desire to attract and recruit minority race students at each institution, especially the historically white institutions. Each institution implements various techniques in accomplishing this objective. For example, universities employ other-race recruiters charged with specific responsibility for recruiting other-race students. Multi-racial recruiting teams are frequently used. In addition, recruitment brochures and other university publications highlight a commitment toward other-race participation. Indeed, with respect to the universities' recruitment initiatives at high schools and junior colleges, the Board of Trustees has prohibited recruitment at schools which fail to execute an agreement allowing multi-racial recruiting teams. The evidence also

shows that other-race students who choose to attend any of the eight Mississippi institutions enjoy desegregated campus environments.

The above practices are reasonable and affirmative efforts by the defendants with respect to the recruitment of other-race students at each institution. Although recruitment of minority students is a competitive business, every institution within the system seems to strive for increased enrollment of students of all races. Such competition was understandably affected each institution's ability to attract other-race students. We find, in any event, that other-race recruitment efforts have been successful and evince the defendant's commitment to the maintenance of a state-wide system which not only speaks of a nondiscriminatory policy and practice but also affirmatively encourages minority participation in the system. The statistics presented at trial also demonstrate success in that the actual representation of blacks in the freshman classes at Delta State University, Mississippi State University, Mississippi University for Women, and the University of Southern Mississippi is in statistical parity with the representation of blacks in the qualified pools. The proof shows that qualified blacks and qualified whites are equally likely to apply, be accepted, and enroll at these universities. While the University of Mississippi is absent from this list, there is no evidence to suggest that the lack of black student applications to the University of Mississippi is due in any way to official discriminatory polices or practices.

Pursuant to the terms set forth in the 1974 Plan of Compliance, defendants have expended considerable efforts toward improving the retention rate of minority students by developing and implementing

developmental studies programs at each institution. We find that the rather substantial success of the programs underscores the good faith effort undertaken by the defendants with respect to the recruitment of minority students.

3. Admissions Policies

Conclusion

In summary, the court finds that the current admission policies and procedures in effect among the Mississippi institutions of higher learning were adopted and developed in good faith and for nondiscriminatory purposes. The defendants' good faith is well illustrated by the affirmative efforts undertaken by the institutions of higher learning towards the attraction and recruitment of other-race students at each institution. Although the various institutions continue to be identifiable by the racial makeup of the student populations, this is not a substantial result of current admission practices and procedures but is instead the result of a free and unfettered choice on the part of individual students. Further, the court finds that the defendants have used every reasonable means at their disposal in their recruitment efforts. Defendants' efforts with respect to other-race student recruitment and retention satisfy their affirmative duty to dismantle the former segregated system insofar as the duty pertains to student enrollment.

C. The Assignment of Missions and the Allocation of Programs, Funding and Facilities

The private plaintiffs and the United States challenge the assignment of missions in 1981 and the current allocation of programs, funding and facili-

ties which flows from the mission designations. The plaintiffs' attack on the policies follows two relatively distinct arguments. First, plaintiffs argue that the affirmative duty to disestablish a former *de jure* segregated system of higher education should be defined and applied in a way so as to ensure both equal access to the system and the substantial integration of all component institutions. Equal access to the system is provided by the elimination of racially discriminating policies and the implementation of race-neutral student admission and faculty and staff hiring policies and procedures. With respect to integration, while implicitly acknowledging that *Bazemore* and *ASTA* speak against the state being under an obligation to directly influence student attendance choices by implementing, for example, quotas or attendance zones, plaintiffs argue that the state must seek to maximize the racial integration of component institutions through the modification and manipulation of policies in areas which indirectly affect and condition student attendance choices, especially policies in the areas of programs, facilities and funding. It is argued that the modification of existing policy in these areas by increasing the level, number and type of programs and facilities found at the historically black institutions would serve to entice greater numbers of white students to attend the historically black schools. For example, it is argued that the offering of one or more popular Ph.D programs at a black institution, that are not available at a white institution, would attract more white students to the black institution.

Regardless of the context, the affirmative duty to disestablish a former *de jure* system is to be defined in unyielding terms to ensure that all student admission and faculty and staff hiring policies and procedures operate on a racially neutral basis. And although the affirmative duty has been defined to include also an interest in fostering the racial integration of educational institutions once segregated by law, the lengths to which the state must go to integrate its institutions vary according to the degree of control the state possesses over attendance patterns and according to the nature and extent of any interests which may serve to counterbalance the interest in integration. Thus, for example, in *Green*, the Supreme Court placed upon the defendants the obligation to adopt mandatory attendance zones in an effort to force some degree of integration in formerly segregated elementary schools. In *ASTA*, on the other hand, the court declined to require the defendants to use the proposed expansion of university level educational offerings as an opportunity to enhance a local historically black institution so as to enable the black school to attract greater numbers of white students. The court based its decision upon a recognition of the many interests and factors which confront decision-makers at the higher education level and which serve to counterbalance the desire to integrate each institution. *ASTA*, 289 F.Supp. at 788. "From where legislators sit, of course, the system must be viewed on a statewide basis. In deciding to open a new institution or build a branch or expand an existing institution . . . the legislature must consider a very complicated pattern of demand for and availability of [such variables as institutional goals, facilities, equipment and course offerings] including, also, the impact on the dual system." *Id.* The *ASTA* court therefore concluded that the Constitution does not require school officials to pursue policy alternatives which happen to offer the greatest integrative

potential at the expense of legitimate racially neutral policies. This court agrees with the holding and the underlying rationale set forth in *ASTA*.

Plaintiffs also argue that the differentiation which exists among the component institutions in the areas of mission, facilities, equipment and funding are disparities causally related to the former *de jure* system since in these areas "normal administrative practices should produce schools of like quality, facilities and staffs." *Swann*, 402 U.S. at 18-19, 91 S.Ct. at 1277. It is therefore argued that the assignment of missions, which is claimed to have favored the historically white institutions at the expense of the historically black institutions, and defendants' allocation of educational resources among the institutions commensurate with the mission designations constitute a denial of equal educational opportunity to the students choosing to attend the historically black institutions. It is further argued that given these continuing disparities between the historically black and the historically white institutions "the victims of discriminating conduct [have not been restored] to the position they would have occupied in the absence of such conduct." *Milliken v. Bradley*, 433 U.S. at 280, 97 S.Ct. at 2757. Plaintiffs accordingly contend that the defendants' duty to disestablish the former *de jure* system has not been satisfied until the disparities in programs, facilities, equipment, and financing have been eliminated through the enhancement of the historically black institutions and their equalization with the historically white institutions.

Preliminarily, the court notes that the plaintiffs' argument as set out above comes dangerously close to suggesting that institutions are accorded rights under the equal protection clause. There should be no

doubt, however, that the equal protection clause has no application to acts of the state taken with respect to its own political subdivisions and agencies. *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40, 53 S.Ct. 431, 432, 77 L.Ed. 1015 (1933); *Trenton v. New Jersey*, 262 U.S. 182, 187, 191, 43 S.Ct. 534, 538, 67 L.Ed. 937 (1923); *County Department of Public Welfare v. Stanton*, 545 F.Supp. 239, 242 (N.D.Ill.1982). Such entities, as creations of the state, simply have no privileges and immunities against the state and are incapable of experiencing injury under the equal protection or due process clauses of the Fourteenth Amendment. *See Triplett v. Tiemann*, 302 F.Supp. 1239, 1242-43 (D.Neb. 1969).

As the court has previously observed, a system of higher education, comprised of a number of separate institutions serving different goals and fulfilling various needs and governed by a common authority, is inherently different from elementary and secondary school systems, which are not marked by diversity but rather are characterized by uniformity. The court therefore does not find as persuasive those authorities relied upon by the plaintiffs in support of their argument that were it not for the former *de jure* system one would have expected and found institutions of substantially the same type, number, and level of program offerings, mission and facilities. To be sure, in reviewing the evidence offered in this case, the court has found a number of differences existing among and between the institutions of higher learning. The court cannot state, however, that such differences are "disparities" reminiscent of the former *de jure* system. Instead, such differences in programs, mission, facilities and funding are usually

found, and are to be expected, within a system of higher education which includes eight institutions throughout the state. Surely it cannot be soundly argued that the state should allocate equal monies to each institution. Such a practice would foster mediocrity or worse. It appears to the court that the very limited higher education dollars are too widely dispersed among too many institutions already. As long as qualified students, black and white, can attend the type and quality of available institutions they choose, there is no denial of equal protection. The court will address particular areas of concern in the sections which follow.

1. The Assignment of Missions

Plaintiffs argue that the way in which the defendants allocated missions in 1981 in essence freezes in the effects of past discrimination since the three major historically white institutions were the only institutions to receive a comprehensive designation, thus ensuring their continued receipt of the greater share of the available educational resources. Plaintiffs impliedly suggest, too, that the defendants' designation of missions, relegating the three historically black institutions to relatively inferior status by classifying these institutions as either "urban" or "regional," was racially motivated. Plaintiffs conclude by stating that the affirmative duty requires that the current mission classifications be disregarded and that the historically black institutions' academic programs be enhanced in an effort to equalize offerings vis-a-vis the historically white institutions.

The court finds plaintiffs' argument to be unpersuasive. Plaintiffs' argument if accepted could lead the court to conclude that they want to continue the

existence of predominantly black and predominantly white colleges but continue them on an equal quality basis with each other. Ignoring the *Plessy v. Ferguson* doctrinal overtones to plaintiffs' argument, the court finds that the defendants' designation of missions in 1981 was not motivated by a discriminatory purpose but was instead necessitated and justified by a need to conserve scarce educational resources. It is obvious that the allocation of missions based on the then existing programs, facilities and other educational resources found at each institution would best serve the goal of resource conservation. Just as in *ASTA*, the defendants in the instant case were and are under no constitutional duty to utilize the opportunity presented by their decision to define and delimit institutions by mission as a way to maximize the racial integration of component institutions. Furthermore, in view of the fact that the system of higher education and each of the member institutions are accessible to graduating high school students on racially neutral grounds, it cannot be seriously contended that the designation of missions discriminatorily impacts on students enrolled in the urban or regional institutions. The court therefore finds that the current mission designations are rationally based on sound educational policies and are not violative of the equal protection clause.

2. Unnecessary Program Duplication

During the trial, plaintiffs attempted to demonstrate that a substantial degree of unnecessary program duplication continues to exist within the system of higher education in Mississippi despite the recent inroads made by the Board of Trustees in lessening the amount of duplication. Apparently, this evidence

was intended to produce a logical inference that the level of unnecessary program duplication existing between historically black institutions and the historically white institutions has a negative effect on white student choice to attend the historically black institutions. The plaintiffs accordingly contend that the defendants are required to eliminate existing program duplication in a way that would enhance the program offerings of the historically black institutions, that is, eliminating the unnecessarily duplicative programs from the curriculum of the historically white institutions.

As detailed above, however, the defendants are under no duty to undertake efforts to enhance the historically black institutions without regard to the various other competing interests which influence policy choices in the higher education area, primarily money. Furthermore, there is no proof that unnecessary program duplication is directly associated with the racial identifiability of institutions. In addition, there is no proof that the elimination of unnecessary program duplication would be justifiable from an educational standpoint or that its elimination would have a substantial effect on student choice. Indeed, the experience of other courts assessing the relative impact of the elimination of unnecessary programs between historically white and historically black institutions indicates that the elimination of such programs would have little impact. *See, e.g., Artis*, slip op. at 4. In any event, there is no showing in this case that the elimination of unnecessary programs within the system of higher education in Mississippi would be feasible, educationally reasonable, or would offer any hope of substantial impact on student choice. The court therefore finds that the continued existence

of unnecessary program duplication within the system of higher education does not constitute a violation of defendants' affirmative duty.

3. Facilities

The court does not perceive a racially discriminatory pattern existing with respect to the allocation and condition of facilities when measuring facility resources by the amount of net square feet per full-time equivalent student. The historically black institutions have over the past 15 years received a higher proportionate share of state appropriations for capital improvements. While having only approximately 25% of the total enrollment, the historically black institutions received 39% of state appropriations from 1970 through 1980 for new construction; and from 1981 through 1986 they have received 51% of such funds. The distribution of funds for capital improvements clearly evinces a good faith affirmative effort on the part of the defendants to provide adequate facilities at the historically black institutions in accordance with their defined mission. While there is a need for repair of facilities at the historically black institutions, the court finds the same need exists across all institutions. We thus perceive no racial pattern with respect to the condition of facilities.

4. Financing

Plaintiffs also advance the argument that the defendants have failed to equitably allocate financial resources at the historically black institutions. It is argued that if one examines the issue of financial allocations by grouping the historically white institutions and the historically black institutions, one clearly finds allocations which favor the historically white institutions.

Plaintiffs' analysis disregards the allocation and definition of missions. It also ignores the relationship between the number and level of programs and the funding necessary to carry out those programs. If one follows mission precepts, no racial correlation can be inferred from an analysis of financial allocations to institutions on a per full-time equivalent student basis. Higher total per full-time equivalent student revenues and expenditures are found to differ between the comprehensive and noncomprehensive institutions; but this is true between white comprehensive and noncomprehensive institutions as well as black noncomprehensive institutions. Such differences are not indicative of educationally unreasonable or inequitable treatment of the historically black institutions. The educational expectation is that institutions with greater program breadth and research emphasis and greater emphasis on technical programs will reflect the higher per student total revenues and expenditures. Thus, while differences in level of funding obviously exist, these differences are not accountable in terms of race but rather are explained by legitimate educational distinctions among institutions. The court finds influential the question posed by the defendants. If from the total funding allocated by the legislature, funds that had been allocated to a comprehensive university were taken by the Board and transferred to a black noncomprehensive university, thereby decreasing the availability or quality of a program or programs at the comprehensive university, what would be the effect on the black students attending the comprehensive university? Approximately 30% of all black college students attending four-year colleges in the state attend one of the comprehensive universities. To follow the plaintiffs' argument to its ultimate conclusion would decrease the quality of the programs available to that 30% of the state's black students.

5. Land Grant Activities

Plaintiffs also argue for increased funding and resource allocation to the Alcorn State University's land grant programs. Plaintiffs point out that the land grant programs offered at Mississippi State University are vastly superior to those afforded students in the land grant programs at Alcorn State University. Plaintiffs contend that the factors which mark the Mississippi State University program as superior, for example, the greater breadth of course offerings and research opportunities, are the product of years of discrimination. It is also argued that additional resources for Alcorn State University would increase other-race presence at Alcorn and black participation in land grant activities.

Insofar as plaintiffs' argument can be construed as suggesting that Alcorn State University has standing to challenge the way in which the state has historically and at present allocates its educational resources among the institutions of higher learning, the court, as detailed above, finds that Alcorn State University is incapable of raising a legally cognizable challenge to such allocations. *See Williams v. Mayor and City Council of Baltimore*, 289 U.S. at 40, 53 S.Ct. at 432. To the extent plaintiffs' contentions are made on behalf of the students and faculty of Alcorn State University, we find that black citizens have equal access to the remaining institutions of higher learning, including Mississippi State University, and that therefore plaintiffs have failed to make a showing that educational opportunity in the land grant area is in

any way restricted. As the court has previously found, the defendants have allocated funds for land grant instruction in accordance with a racially neutral and an educationally sound funding formula. Further, the differentiations made by the defendants with respect to the nature of the land grant programs offered at the two land grant schools are educationally sound and are not motivated by discriminatory motive. Finally, the affirmative duty as defined by this court does not require the defendants to manipulate institutional missions, program offerings and facilities in an effort to maximize the racial integration of component institutions. Accordingly, the court finds plaintiffs' contentions to be without merit.

D. Faculty and Staff Employment

The private plaintiffs and the United States contend that a review of historical and current patterns of employment of faculty and administrators, by race, reveals that this pattern, alone, continues to designate universities as intended for black or white students in accord with the institutions' historical racial designation. It is argued that because the defendants' former *de jure* system also encompassed faculty and staff employment, as well as the Board of Trustees staff employment, the affirmative duty to dismantle the former segregated system extends as well to this area. Further, plaintiffs point to alleged specific instances of discriminatory conduct directed towards black faculty and staff at several of the historically white institutions. It is argued that this evidence of intentional discrimination establishes a violation of the Fourteenth Amendment and 42 U.S.C. § 1981.

The evidence shows, however, that the defendants have adopted racially neutral hiring policies with re-

spect to faculty and all staff at each of the institutions of higher learning, including the Board's own staff. Consistent with the defendants' stated objective of increasing employment of other-race faculty, the predominantly white institutions expend substantial affirmative efforts each year in attempting to attract and employ other-race faculty. There is an acute shortage of qualified black faculty applicants throughout the United States, and practically all universities are competing for a limited number of black teachers. Despite the acute shortage of supply of qualified minority faculty existing nationwide, the defendants' affirmative action policies have borne considerable fruit. Since 1974, the percentage of blacks hired exceeds the black representation in the qualified labor pool. Moreover, even though the turnover rate for black faculty is higher than it is for whites due to the high demand for black faculty existing nationwide, the present representation of blacks among the faculty at each of the five predominantly white institutions is statistically in line with the relevant labor market for faculty employed since 1974.

The court is not aware of any additional minority faculty and staff recruitment procedures the defendants could implement which would assure greater minority faculty and staff representation at the predominantly white institutions and minority staff representation within the Board of Trustees' own organization. The court, therefore, finds that the defendants' stated policy of nondiscrimination and affirmative commitment to the employment of other-race faculty and staff at every institution within the system, and the efforts undertaken pursuant to the stated policy, serve to fulfill their affirmative duty to dismantle the former segregated system as it pertains to faculty and staff employment.

IV. Conclusion

From the many days of testimony and the thousands of pages of exhibits received by the court during this trial, it is very easy indeed to become concerned with the inefficiencies and wastefulness of the higher education system in the state which came out so clearly from the evidence; but the issues of this case are not about the inefficiency for example of having two state universities only 20 miles apart in the eastern part of the state with separate administrations and duplicating programs, and two state universities on the western side of the state only 50 miles apart, each with separate administrations and duplicating programs. The issues are not about the economic efficiency of funding traditionally black and traditionally white universities which duplicate as many as 75% of each other's baccalaureate programs. Nor do the issues in the case deal with the wisdom of maintaining a system which required in the hard economic times of 1981-86 the first university of the state, the University of Mississippi, to drop more programs than was required of a smaller, noncomprehensive university; nor do the issues deal with the attempt by the state to maintain three comprehensive universities which compete with each other for the financial resources available, when larger surrounding states with larger higher education budgets maintain only one premier comprehensive university per state.

What the issues of this case are about are the Constitution and the laws of the United States as they apply to the offering of higher education by the State of Mississippi to its citizens and whether any practices or policies of the State in the higher education field are racially motivated to bring about results which deprive black citizens of benefits provided to white citizens.

In summary, the court finds that current actions on the part of the defendants demonstrate conclusively that the defendants are fulfilling their affirmative duty to disestablish the former *de jure* segregated system of higher education. The defendants have adopted race-neutral policies and procedures in the areas of student admission and recruitment and in the areas of faculty and staff hiring and resource allocation. The defendants have also undertaken substantial affirmative efforts in the areas of other-race student and faculty-staff recruitment and funding and facility allocation. It is obvious from the testimony presented that the defendants undertake to fund more institutions of higher learning than are justified by the amount of financial resources available to the state, but that is a policy decision of the legislature that affects the quality of the institutions among which the monies must be so thinly divided. Such a decision by the legislature goes to the quality of the institutions and not to the constitutionality of the funding. The differentiations made by the defendants with respect to each of the individual institutions in the designation of institutional missions are reasonable and were not motivated by discriminatory purpose. The court finds no proof in this record of current violation of the Constitution or Statutes of the United States by the defendants. This case should therefore be dismissed.

Let an order issue accordingly.

APPENDIX D

Constitutional and Statutory Provisions Involved

The Equal Protection Clause of the Fourteenth Amendment provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, § 1.

Section 601 of Title VI of the Civil Rights Act of 1964 provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

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UNITED STATES OF AMERICA,

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Petitions For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

MIKE MOORE
Attorney General
State of Mississippi
P.O. Box 220
Jackson, Mississippi 39205

WILLIAM F. GOODMAN, JR.
(Counsel of Record)
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Special Assistant
Attorneys General
P.O. Box 650
Jackson, Mississippi 39205
(601) 948-6470

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. The private petitioners' question concerning the scope of the legal duty to disestablish should be more precisely stated under the court of appeals opinion as follows:

> Whether the State's affirmative duty to disestablish its prior system of de jure segregation in higher education extends beyond discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures which afford all students real freedom of choice to attend the college or university they desire.

2. The United States presents a single purported legal question concerning a state's obligation to dismantle a racially dual system. The question is predicated, however, upon an erroneous presumed fact of alleged continuing state interference with choice by race. The court of appeals did not hold respondents interfere with choice by race; it affirmed the district court and found "real freedom of choice" exists. The United States' question is a question of fact which should be stated as follows:

> Whether the district court's finding that the continued racial identifiability of Mississippi universities persists today as the result of free and unfettered choice of students and personnel and despite the State's substantial affirmative good-faith efforts in "other-race" recruitment and resource allocation is clearly erroneous.

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Petitions For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

The State of Mississippi respondents[1] submit this consolidated response in opposition to the petitions for a

[1] Respondents are the Governor, the Commissioner of Higher Education, the Board of Trustees of State Institutions of

(Continued on following page)

writ of certiorari separately filed by the class of black citizens and the United States.

STATEMENT OF THE CASE

The State of Mississippi admittedly maintained a segregated system of higher education through at least 1962. Court action was necessary to assure admission of the first black student into a formerly all-white public institution of higher learning. From that point forward, however, the petitioners' statements of the case require supplementation and in some instances correction. While predominantly black and, to a lesser extent, predominantly white universities do remain, the record, district court opinion and court of appeals opinion preclude any notion of mechanical equation of Mississippi's system today with its distant unconstitutional past.

The district court conducted a five-week bench trial in April and May 1987. The proof addressed virtually all facets of public higher education, from governance, student recruitment, student admission, faculty and staff employment practices to institutional mission designations, program distribution, facilities and funding practices. The district court weighed the testimony of 71 witnesses and received some 56,700 pages of exhibits.

(Continued from previous page)

Higher Learning, the individual members of the Board of Trustees, Delta State University, Mississippi State University, Mississippi University for Women, the University of Mississippi, the University of Southern Mississippi, and the chief administrative officer of each of these five universities.

(App. 109a)[2] The district court entered comprehensive detailed findings in reaching its factual conclusions that respondents have not merely "adopted race-neutral policies and procedures in the areas of student admission and recruitment and in the areas of faculty and staff hiring and resource allocation"; respondents have "also undertaken substantial affirmative efforts in the areas of other-race student and faculty-staff recruitment and funding and facility allocation." (App. 201a) Respondents incorporate by reference the district court's factual findings dispersed throughout its opinion, for these findings accurately relate the facts material to the questions presented in the petitions.

The court of appeals plainly stated at the outset of its opinion the ultimate basis for its affirmance: "Finding that the *record makes clear* that Mississippi has adopted and implemented race neutral policies for operating its colleges and universities and that *all students have real freedom of choice* to attend the college or university they wish, we affirm." (App. 2a) (emphasis added). Like the district court, the court of appeals acknowledged that "Mississippi was . . . constitutionally required to eliminate invidious racial distinctions and dismantle its dual system." (App. 13a) Similar to the district court, the appellate court emphasized, however, that "universities are not simply institutions for advanced education. They

[2] Citations to the lower court opinions will be referenced to the appendices following the United States' petition in which the opinions have been reproduced. Designations will be "App. [page]."

differ in character fundamentally from primary and secondary schools." (App. 23a) The court concluded that delineation of the duty to disestablish must necessarily honor the distinctive attributes of higher education, particularly freedom of choice and institutional diversity. (App. 23a-26a) The appellate court read *Bazemore*,[3] in conjunction with *ASTA*,[4] to be the proper assessment of this " 'wholly different milieu' of a voluntary association." (App. 25a) Thus, the court of appeals held that the state satisfies its affirmative duty to disestablish "by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures." (App. 26a)

The court of appeals did not stop with definition of the legal duty to disestablish; it scrutinized the record to assure the presence of genuine good-faith, race-neutral policies which afford "real freedom of choice." The court saw two components of the system as bearing most directly on the presence of "true" student choice: institutional mission designation and student admissions policies. The court of appeals found "the record amply supports the findings of the district court that the [institutional mission] designations are commonly used, educationally sound, and not motivated by discriminatory intent." (App. 31a) The court held "the district court gave full consideration to all aspects of the admissions process"; and it concluded district court findings that

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[3] *Bazemore v. Friday*, 478 U.S. 385 (1986).

[4] *Alabama State Teachers Ass'n v. Alabama Public School and College Auth.*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969).

"current admissions policies and procedures in effect in Mississippi universities were adopted and developed in good faith and for nondiscriminatory purposes" were not clearly erroneous. (App. 34a-35a)

The en banc court also found statistical parity in respondents' faculty employment practices, noted the genuineness of the commitment to increase black employment at the predominantly white universities, and acknowledged the substantial difficulties inherent in minority faculty recruitment. (App. 35a-36a) The court of appeals stated it had "nothing to add" to district court findings concerning alleged "disparities between the historically black and historically white institutions regarding program offerings and duplication among universities and branch centers, faculty, funding, library volumes, facilities, and land grant programs," with only one exception. (App. 36a) The court of appeals did find institutional "disparities" today to be "reminiscent" of the segregated system, but only in the sense that present institutional mission designations cannot be totally extricated from an institution's past. The court simultaneously stated that such institutional distinctions do not "deny equal educational opportunity or equal protection of law," for respondents "have adopted good-faith, race-neutral policies and procedures and have fulfilled or *exceeded* their duty to open Mississippi universities to all citizens regardless of race." (App. 37a) (emphasis added). The court of appeals rejected outright the private petitioner suggestion that such institutional differences require resource allocations to universities specifically

according to race to make the predominantly black universities "equal" to the predominantly white comprehensive universities. (App. 37a)

I. The United States' Statement of the Case

The United States asserts that in ruling for respondents "the district court recognized that there remained significant differences between the historically white and historically black schools as to admission standards, student and faculty composition, and funding." (U.S. Pet. at 4) It then purports to contrast these "recognitions" with the district court's finding of satisfaction of the affirmative duty through adoption of race-neutral polices. The implicit suggestion is one of inconsistency. Yet, the district court specifically found with respect to student admission and recruitment that the respondents' current admission policies were adopted for nondiscriminatory purposes and are "inherently reasonable and educationally sound," that respondents "have used every reasonable means at their disposal in their recruitment efforts," and that the continued identifiability of institutions by student racial makeup is the "result of a free and unfettered choice on the part of individual students." (App. 119a-135a, 185a, 187a) The district court likewise not only found statistical parity in faculty employment but also concluded that no "additional minority faculty and staff recruitment procedures" exist which respondents "could implement which would assure greater minority faculty and staff representation at the predominantly white institutions." (App. 135a-138a, 199a) As to

funding, the district court similarly held that "while differences in level of funding obviously exist, these differences are not accountable in terms of race, but rather are explained by legitimate educational distinctions among institutions." (App. 156a-163a, 196a)

II. The Private Petitioners' Statement of the Case

Private petitioners' assertion that the pre-1962 "separate and unequal system is substantially intact" today is erroneous. The single statistic reflecting black participation in the entire public system less than black representation in the population as a whole is meaningless standing alone. The characterization of "HWIs [as] token employers of black faculty" and administrators is flatly contradicted by the substantial evidence of statistical parity in hiring and genuine affirmative recruitment practices. (App. 35a-36a, 135a-138a, 198a-199a) Respondents have always acknowledged that differences in the distribution of programs exist, but the differences or "disparities" are not associated with race at all. They are simply inherent in the difference between comprehensive and noncomprehensive universities. There is no predominantly black comprehensive university, but there also is no pattern among the noncomprehensive universities with respect to race. (App. 11a, 36a, 146a)

Private petitioners' broad allegation regarding alleged less favorable financial treatment of black students than white students obviously does not hold true under their own premise for thousands of students. The

thousands of black students enrolled in the predominantly white comprehensive universities are "treated better" than the thousands of white students at the predominantly white Delta State University and Mississippi University for Women. (App. 196a-197a) Further, the alleged "accumulated deficit" is not among the noncomprehensive universities. There is no present correlation by race among the noncomprehensive universities in funding or with respect to areas in which funds have historically been expended – faculty, facilities, or programs.[5] (App. 29a, 36a, 146a, 161a-166a, 195a-197a)

Private petitioners' contention that the institutional mission designations adversely affect blacks as opposed to whites is incorrect. First, the record establishes blacks themselves are substantial beneficiaries of the educational opportunities nondiscriminatorily afforded by the

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[5] Private petitioners cite the testimony of a Dr. Leslie on funding and institutional mission. Prior to his involvement in this litigation this same Dr. Leslie published the following:

> [Cost] comparisons [of institutions with different missions] are largely without merit. They compare the proverbial 'apples and oranges,' for [such] universities are not similar; they are expected to do quite different things.
>
> The unique character of American higher education is embodied in the concept of diversity. Diversity is the quality that differentiates among colleges and universities. It is the quality of distinctiveness. This quality says that there is no better or best kind of collegiate institution; there are only different kinds, often with different expenses.

(Exh. Bd-459 at 28; Leslie, T. 605-10)

comprehensive universities. (App. 133a-138a, 185a-187a, 196a-199a) Moreover, the 1981 mission designations did not just limit the predominantly black universities. They "put boundaries around all institutions," particularly the predominantly white Delta State University and Mississippi University for Women. (App. 30a-31a) The 1981 mission designations contemplated a "more comprehensive" status for the predominantly black Jackson State University than for the predominantly white Delta State University and Mississippi University for Women. (App. 141a-142a) While the record does address at length issues of institutional prestige and "quality" associated with size and breadth of programs, neither the record nor common knowledge will support the blanket statement that an individual's educational experience at a small school is inherently inferior to that at a large school. Furthermore, there is no demonstrable relationship in this record between resources and racial presence.

Private petitioners' third ultimate factual allegation that the admissions standards are racially discriminatory and impede liquidation of an allegedly discriminatory system is also wrong. Both the district court and court of appeals correctly found that the relevant admission standards actions were taken long after 1961 under totally different circumstances based upon different, reasonable educational criteria and with different, reasonable educational objectives. (App. 32a-35a, 119a-133a, 177a-185a) The record establishes the admission policies are not the cause of the "racial identifiability" of universities. (App. 131a, 184a; Siskin, T. 4228-29) Petitioners' broad assertion of the availability of more inclusionary, alternative admissions criteria ignores their failure to establish the

existence of an educationally reasonable, less "discriminatory" alternative admissions standard.[6] While respondents' practices do not comport precisely with every ACT suggestion, an ACT vice president specifically testified that the educationally reasonable admissions standards are consistent with ACT's encouragement of utilization of criteria in addition to test scores in making admissions decisions. (App. 34a, 132a; Anzalone, T. 3735-36; Exh. US-970 at 124-26, 133-34)

REASONS FOR DENYING THE WRIT

Respondents certainly do not dispute the importance of the subject decision to their citizenry. We have ourselves previously asserted the exceptional importance of proper delineation of the scope of the state's duty to disestablish state-imposed segregation in public higher education. Nevertheless, this is not to say that intervention of this Court is warranted on this record. No intolerable conflict between circuit courts of appeals exists concerning the scope of the legal duty to disestablish. The Fifth Circuit ruling here does delineate a duty different than the one referenced in the Sixth Circuit decision in

[6] Petitioners' testing expert did criticize the use of any "cut score," regardless of how low, but he avoided the fundamental issue of educational reasonableness. He stated this issue would require "a different type discussion" involving "a lot of other things" and declined to address the educational feasibility of any alternative admissions policy. (Hilliard, T. 1918-19, 1923-28)

Geier v. Alexander, 801 F.2d 799 (6th Cir. 1986); but controlling findings in previous pre-*Bazemore* litigation, the narrow issue presented and patent legal rationale errors in *Geier v. Alexander* make resolution of such a "conflict" by this Court unnecessary.

Bazemore v. Friday settles the question of legal duty to disestablish. The United States effectually concedes as much by the single question it presents for review. Stripped of all pretense, the United States raises only the factual question of discriminatory interference with choice, alleged conduct precluded by both *Bazemore* and *Green*.[7] The panel majority opinion is to the same effect; its disavowal of *Bazemore* ultimately purportedly rests only on finding *Bazemore* "factually distinguishable." This Court need not review factual contentions rejected by both the trier of fact and a court of appeals sitting en banc.

Furthermore, application of a broader reading of *Brown*[8] and *Green* than afforded by *Bazemore* will not change the result below. Review by this Court is unnecessary since petitioners are entitled to no relief on this record regardless of whether *Bazemore* is strictly applied or some more "exacting" standard under *Green* is invoked.

I. There is no conflict between circuit courts of appeals which warrants granting certiorari.

The Sixth Circuit's decision in *Geier v. Alexander* is the culmination of a line of decisions concerning desegregation of Tennessee's system of higher education. It deals

[7] *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).

[8] *Brown v. Board of Education*, 347 U.S. 483 (1954).

specifically with the United States' challenge of a single provision of a consent decree to which no other party objected. The district court's approval of the consent decree in 1984 followed 16 years of litigation marked by multiple district court and appellate decisions all preceding this Court's decision in *Bazemore*.

A. *Geier v. University of Tennessee* is factually distinguishable and lacks authority due to this Court's subsequent decision in *Bazemore*.

The United States correctly recognizes that the Sixth Circuit articulated its definition of the scope of the legal duty to disestablish not in *Geier v. Alexander* but in *Geier v. University of Tennessee*, 597 F.2d 1056 (6th Cir.), *cert. denied*, 444 U.S. 886 (1979). The factual record materially differs, however, from the controversy here. The Sixth Circuit affirmed as "not clearly erroneous" district court findings of affirmative state actions which actually " 'impeded the dismantling of the dual system.' " 597 F.2d at 1067. The district court here concluded just the opposite (App. 187a, 194a-199a), and the Fifth Circuit affirmed. (App. 26a-37a) Further, the dominant issue in *Geier v. University of Tennessee* was the State's enhancement during the course of the litigation of the University of Tennessee's non-degree-granting center in Nashville; it turned the center into a four-year degree granting branch of the university proximately located to the historically black Tennessee State University. Respondents here long ago mooted allegations of maintenance of predominantly black and predominantly white colleges in the same metropolitan area. (App. 146a-150a) So pervasive were respondents' actions that petitioners declined to even offer purported "off-

campus center" proof after 1981. (Conrad, T. 77-79, 251-52)

Such a different "state of facts" makes granting certiorari unnecessary here. Indeed, the Court has dismissed a writ of certiorari as improvidently granted where "the asserted conflict in decisions arises from differences in states of fact, and not in the application of a principle of law." *Wisconsin Electric Co. v. Dumore Co.*, 282 U.S. 813 (1931). Likewise, the "real and embarrassing conflict of opinion and authority between the circuit courts of appeals" generally required before certiorari is granted does not arise under such distinctive facts. *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 392-93 (1923). This Court's affirmances of both *ASTA* and *Norris*[9] demonstrate with respect to the very issue now before the Court this significance of different factual findings, for the lower courts there also viewed the legal duty to disestablish differently.[10]

Moreover, to the extent *Geier v. University of Tennessee* arguably turns on something other than affirmative state actions impeding desegregation, the linchpin of the court's decision becomes the continued racial identifiability of historically black Tennessee State University.

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[9] *Norris v. State Council of Higher Education for Virginia*, 327 F. Supp. 1368 (E.D. Va.), *aff'd mem.*, 404 U.S. 907 (1971).

[10] The court of appeals here cogently explained the correctness of this Court's affirmances of what the United States described as "contradictory decisions," *ASTA* and *Norris*. (App. 18a)

The Sixth Circuit included the following among its concluding remarks: "Where an open admissions policy *neither produces the required result of desegregation nor promises realistically to do so*, something further is required." 597 F.2d at 1067. The Sixth Circuit, however, did not have the benefit of *Bazemore*, and the Sixth Circuit's attachment of controlling significance to continued racial identifiability flatly contradicts *Bazemore*.

Continued racial identifiability following adoption of an "open admissions" policy where state-imposed segregation once existed in a noncompulsory setting was the precise issue in *Bazemore*. Prior to 1965 the North Carolina Agricultural Extension Service assigned students electing to participate in noncompulsory 4-H or homemaker clubs to particular clubs according to race. Thereafter "in response to the Civil Rights Act of 1964 the Service discontinued its segregated club policy and opened [the clubs] to any otherwise eligible person regardless of race." 478 U.S. at 407. Students electing to participate were permitted to choose the particular club, but "a great many all-white and all-black clubs" remained. This Court's holding based upon these facts could not be clearer: "[T]his case presents no current violation of the Fourteenth Amendment since the Service has discontinued its prior discriminatory practices and has adopted a wholly neutral admissions policy." 478 U.S. at 408.

Directly confronting the constitutional and Title VI inquiry posed by continued racial identifiability, *Bazemore* holds that the state's establishment of a nondiscriminatory admissions system complies with any " 'affirmative action' " requisite "to overcome the *effects of prior discrimination*." 478 U.S. at 408-09 (emphasis added). Indeed, you

have subsequently stated that *Bazemore* stands for the proposition that continued racial identifiability does not impose a "duty to integrate" in the absence of evidence of "exclusion" by race. *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 503 (1989). Justice Scalia, concurring in *City of Richmond*, further observed that in describing *Green* as "a wholly different milieu" *Bazemore* "reflected [your] unwillingness to conclude, outside the context of school assignment, that the continuing effects of prior discrimination [, *i.e.*, racial identifiability,] can be equated with state maintenance of a discriminatory system." *Id.* at 525 (Scalia, J., concurring).

Bazemore discredits the decision in *Geier v. University of Tennessee*. There is not the first suggestion in *Bazemore* that in noncompulsory activities like higher education a state must persuade individuals to make choices that lead to systematic integration. Thus, *Geier v. University of Tennessee* has lost its weight of authority by reason of your intervening decision in *Bazemore*, and any conflict between the Sixth Circuit decision and the Fifth Circuit decision here does not necessitate granting certiorari.

B. *Geier v. Alexander* is a consent decree decision controlled by the pre-*Bazemore Geier* litigation.

Admittedly, however, the Sixth Circuit decision in *Geier v. Alexander* is post-*Bazemore* and purports to adhere to *Geier v. University of Tennessee*. The improper confrontation with *Bazemore* notwithstanding, the issue in *Alexander* was not the same as before the Fifth Circuit here. The ultimate issue in *Alexander* was whether the district

court abused its discretion in approving the parties' settlement reached after 16 years of litigation. The narrow *Bazemore*-related question was whether the use in the consent decree of alleged " 'racial quotas' to prefer minority students . . . deprived non-minority students of equal protection." 801 F.2d at 804. Moreover, the Sixth Circuit's treatment of the ultimate issue and narrow *Bazemore* question cannot be divorced from the court's view of the parties' positions throughout the history of the litigation and accompanying prior judicial findings.

The United States, as an intervenor, was the only party objecting to the decree; it limited its objection to a single provision promoting, but not guaranteeing, increased black enrollment in professional schools; and the consent decree "imposed no obligation on the United States." 801 F.2d at 802-03, 806, 810. The Sixth Circuit acknowledged the United States' right as an intervening party to object to the consent decree, but it emphasized that the United States lacked the " 'power to block' " entry by refusing to consent to a decree under which it had no obligations. *Id.* at 808. The court of appeals also observed that the district court "may enter a consent decree that includes broader relief than the court could have ordered after a trial." *Id.* When confronted with the prospect of concluding the litigation by consent, the court chose to describe the Department of Justice's present attempt to "pull back" from the broad remedial orders it had previously pursued throughout the litigation as "a truly ironic situation." *Id.* at 809. The Sixth Circuit's reluctance to invoke *Bazemore*, which was decided only two weeks before oral argument in *Alexander*, is at least somewhat understandable under such circumstances.

Furthermore, the court of appeals thought it significant that "virtually the entire argument by the Department of Justice in the district court was built upon the theory of 'victim specificity,' " a position abandoned at oral argument. Of still greater significance was the Sixth Circuit's view that the United States' change in position was not merely the previously referenced "truly ironic situation"; the court treated the United States' contentions as virtually barred by previous holdings in the case. It emphasized the application of *Green* to higher education desegregation was "established as the law of the case" in 1968 without the United States "arguing to the contrary before the district court." 801 F.2d at 805. The court likewise insisted that the Department of Justice's 1986 position that "the illegal condition of segregation . . . was cured by adoption of an open-admissions policy and compliance with the district court's prior decrees" was "contrary to specific findings of the district court in decisions that became *final without appeal.*" *Id.* (emphasis added).

That the Sixth Circuit in *Alexander* expressly declined to apply *Bazemore* obviously cannot be denied. The point here, however, is that the context in which the Sixth Circuit failed to apply *Bazemore* does not create an intolerable conflict as to a rule of law sufficient to mandate granting certiorari. The determinative issue in *Alexander* is not what actions a state *must* take to disestablish state-imposed segregation. The ultimate holding is only that "the district court did not abuse its discretion in entering the consent decree without the approval of one intervening party." 801 F.2d at 810. To be sure, the Sixth Circuit

reaches this result by affording *Bazemore* a reading different than the Fifth Circuit here. Nonetheless, and particularly given *Alexander's* unique procedural posture, the Sixth Circuit's refusal to conclude *Bazemore* condemned the modest attempt to promote professional school enrollment of qualified blacks actually poses no conflict in application of a rule of law. The Fifth Circuit's holding here embraces too the encouragement of greater black participation at predominantly white universities.[11]

The disagreement in reasoning between the two courts of appeals concerning the applicability of *Bazemore* to different questions also does not constitute a conflict in "principle" sufficient to justify granting certiorari.[12] This

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[11] The record demonstrates and the district court approved respondents' substantial affirmative efforts to increase black presence at the predominantly white universities. (App. 201a) For example, such affirmative actions include special salary support for minority faculty (Lucas, T. 3425-26; Feisal, T. 3947; Exh. US-946 at 115), preferential treatment for minorities in faculty housing (Chain, T. 4130-31; Exh. Bd-104 at 25), scholarships and stipends earmarked for minority use (Feisal, T. 3947; Exh. US-964 at 35-36, US-967 at 54; Exh. Bd-041 at 18, Bd-104 at 26-27), and cooperative engineering, law and health professions programs targeting qualified black students. (Exh. Bd-103 at 5, 6 & 15, Bd-109 at 5-6; Exh. US-749, US-755) The Fifth Circuit found that respondents had met or *exceeded* their duty to disestablish. (App. 37a)

[12] The court of appeals here did also state it disagreed with the "holding" in *Alexander*. (App. 22a) The Fifth Circuit did not appear to consider the distinct proposition of whether *Bazemore*, or the Fourteenth Amendment, precluded entry of the single consent decree provision; the court clearly did not explore this Court's body of affirmative action jurisprudence

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is particularly true since the Sixth Circuit panel's rationale is so clearly wrong and has been soundly rejected by the Fifth Circuit en banc, including the judges in dissent. The en banc court properly concluded: "The root problem with the *Geier* court's reasoning was correctly identified by the panel majority in the present case as an improper 'hierarchy of values.' . . . Such a hierarchy is purely subjective, impossible to apply, and not founded on the Constitution." (App. 23a) *Bazemore* makes no constitutional differentiation according to perceived value of the state-sponsored activity and no other Supreme Court decision suggests such a sliding scale; discrimination in *any* state activity is equally unlawful.

II. This Court has adequately settled the duty of the state on this record to disestablish de jure segregation in higher education.

A. *Bazemore*, particularly when read in conjunction with *ASTA*, clearly defines the duty to disestablish in higher education.

Bazemore's failure to address higher education specifically does not preclude recognition that it adequately settles the issues raised by the petitions. (Priv. Pet'r Pet. at 24-25) Indeed, the United States concedes for all practical purposes the applicability of *Bazemore* to definition of the state's duty to disestablish de jure segregation in higher education. It carefully avoids any assertion that

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concerning the appropriateness of governmental racial classifications and race-conscious remedies. In any event the holding in *Alexander* is not the question presently before this Court.

the "discontinuation of prior discriminatory practices and adoption of a wholly neutral admissions policy" fails to satisfy the legal duty to disestablish. Instead, the United States subtly frames the issue in the context of alleged continued state interference with choice by race, a disguised factual question which if established would violate the *Bazemore* legal standard. Private petitioners do challenge directly the legal sufficiency of adoption of genuine race-neutral policies, but their various attempts to escape *Bazemore* only demonstrate why *Bazemore* is determinative here. The panel majority itself concluded only that *Bazemore* was "factually distinguishable," a finding the panel dissenter and author of the en banc majority opinion correctly observed "merely puts the evidence ahead of the standard." (App. 73a, 103a)

The lines were clearly drawn in *Bazemore*. Both the majority opinion and dissent plainly depict the issue to be delineation of the state's obligation to disestablish de jure segregation in voluntary, noncompulsory associations. Private petitioners assert *Bazemore* "does not purport to adopt a rule applicable to all instances in which persons choose to participate in a particular entity." Yet, the Court specifically states your "cases requiring parks and the like to be desegregated lend no support for requiring more than what has been done in this case." 478 U.S. at 408. Indeed, in a park desegregation decision, the Court specifically grouped parks with state universities, distinguishing them from elementary and secondary schools. *Watson v. City of Memphis*, 373 U.S. 526, 532 n.4 (1963).

Bazemore cannot be skirted on grounds of "different subject matter." The entire en banc court agreed that the

refusal in *Bazemore* to apply *Green* rests upon "choice." *Bazemore* described *Green* as a "wholly different milieu" because the state mandated and controlled attendance patterns typical of compulsory elementary and secondary schools presented an altogether different issue than the noncompulsory clubs (and higher education). *Bazemore*, 478 U.S. at 408, 416 n.4 (adoption of U.S. position); *City of Richmond*, 488 U.S. at 525 (Scalia, J., concurring). Further, no duty to exhaust "possibilities" or efforts to induce desegregative choices can be gleaned from *Bazemore*.[13] The court of appeals clearly properly harmonized *Bazemore*, *Norris*, *ASTA*, and *Green*.

B. Even application of a broader reading of *Brown* and *Green* than afforded by *Bazemore* will not change the result below.

The district court's analysis of the evidence went far beyond the mere confirmation of respondents' adherence to the *Bazemore* standard through discontinuation of prior discriminatory admission practices and the adoption of a "wholly neutral admissions policy." It made extensive factual findings addressing motive, effect, and the availability of educationally reasonable alternatives concerning not just student admissions and recruitment and faculty and staff employment efforts but also resource allocation practices. The district court's exhaustive

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[13] The petitioners' own suggestion that "services" or resources had been equalized in *Bazemore* belies the contention that other-race participation must be encouraged. Making 4-H clubs "the same" would obviously not encourage club selection on some basis other than race.

review of the evidence demonstrates that respondents have fulfilled any more "exacting" duty to disestablish arguably applicable under *Brown* and *Green*.

The court of appeals found respondents "have fulfilled or *exceeded* their duty to open Mississippi universities to all citizens regardless of race." (App. 37a) (emphasis added). With respect to student admissions policies the court stated it "would be reluctant to say the [respondents] have not met their duty even under *Green*." (App. 34a) In response to private petitioners' erroneous Title VI regulations contentions, the appellate court stated: "Under the present record we are not prepared to say the [respondents] have failed to meet the [alleged broader] duties outlined in the regulations." (App. 26a n.11)

Such conclusions easily rest upon findings of (i) respondents' exhaustion of reasonable efforts in other-race student, faculty and staff recruitment (App. 35a-36a, 133a-138a, 166a-168a, 185a-187a, 198a-199a); (ii) respondents' implementation of "extremely flexible," "very modest," "nondiscriminatory," "educationally reasonable" admission standards (App. 6a-9a, 34a, 119a-133a, 181a-185a); (iii) admissions practices which are not the cause of institutional racial identifiability and which in reality deny "only a few black first-time applicants" enrollment at the comprehensive universities (App. 34a, 131a, 184a); (iv) the absence of racial correlation in program distribution, facilities placement, funding allocation and institutional mission assignment (App. 29a-31a, 36a, 146a, 161a-166a, 192a-197a); and (v) continued racial identifiability resulting from free student choice. (App. 2a, 27a, 187a, 201a) Such findings portray the elimination

of "racial discrimination through official action." The "root and branch" elimination of the "vestiges" or "lingering effects" of a dual higher education system can mean nothing more.[14]

Thus, this Court need not undertake to delineate further the applicable duty to disestablish state-imposed segregation when it will not change the result below. The ultimate controversy here is factual, not legal. Both the

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[14] The United States alleges a failure to disestablish in two particular respects – student admissions and program duplication. Addressing admissions at length both lower courts readily concluded the record will not support any allegation of "racial bias." Likewise, private petitioners' Title VI claims present no novel issues. *Bazemore* clearly controls any issue under the "affirmative action" regulation cited by private petitioners (but not the United States); 34 C.F.R. § 100.3(b)(6)(i) is identical to 7 C.F.R. § 15.3(b)(6)(i), upon which the *Bazemore* plaintiffs unsuccessfully relied. *Bazemore*, 478 U.S. at 412 (Brennan, J., dissenting). Further, the trial court found respondents' practices to have substantial legitimate educational justification, and the petitioners failed to disprove that justification. *See Quarles v. Oxford Municipal Separate School District*, 868 F.2d 750, 754 n.3 (5th Cir. 1989).

The assertion that program duplication perpetuates the dual system is equally meritless. The district court correctly found that "there is no proof that unnecessary program duplication is directly associated with the racial identifiability of institutions"; that "there is no proof that the elimination of unnecessary program duplication would be justifiable from an educational standpoint or that its elimination would have a substantial effect on student choice"; and that "there is no showing in this case that the elimination of unnecessary programs within the system of higher education in Mississippi would be feasible, educationally reasonable, or would offer any hope of substantial impact on student choice." (App. 194a) The court of appeals agreed. (App. 36a)

district court and court of appeals have expended enormous energy in assessment of the voluminous record. This Court as a court of law need not undertake that task again, particularly when both lower courts unequivocally found that the record clearly required the same result.[15]

CONCLUSION

The general requisites for granting certiorari are not compelling here; the en banc lower court decision is plainly correct. The petitions should be denied.

Respectfully submitted,

MIKE MOORE
Attorney General
State of Mississippi
P. O. Box 220
Jackson, Mississippi 39205

WILLIAM F. GOODMAN, JR.
(Counsel of Record)
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Special Assistant Attorneys General
P. O. Box 650
Jackson, Mississippi 39205
(601) 948-6470

Counsel for Respondents

[15] The questions presented by private petitioners in addition to the scope of the legal duty to disestablish obviously do not warrant discretionary review by this Court. The court of appeals' disposition of these issues is beyond credible challenge.

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(3)

Nos. 90-6588 and 90-1205

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JAKE AYERS, JR., *et al.*,

and

UNITED STATES OF AMERICA,

Petitioners,

vs.

RAY MABUS, GOVERNOR,
STATE OF MISSISSIPPI, *et al.*

MOTION FOR LEAVE TO FILE AND BRIEF OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONS FOR WRITS OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JANELL M. BYRD
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
1275 K Street, N.W.
Suite 301
Washington. D.C. 20005
(202) 682-1300

*JULIUS LEVONNE CHAMBERS
CHARLES STEPHEN RALSTON
NORMAN J. CHACHKIN
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
99 Hudson Street
16th Floor
New York, NY 10013
(212) 219-1900

Counsel for Amicus Curiae

**Counsel of Record*

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

Nos. 90-6588 and 90-1205

In the
Supreme Court of the United States
October Term, 1990

Jake Ayers, Jr., *et al.*,

and

United States of America,

Petitioners,

vs.

Ray Mabus, Governor,
State of Mississippi, *et al.*

MOTION OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONS FOR WRITS OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The NAACP Legal Defense and Educational Fund, Inc. (LDF) respectfully moves the Court for leave to file the

attached brief as *amicus curiae* in support of the petitions for writs of *certiorari* to the United States Court of Appeals for the Fifth Circuit. Both the Ayers petitioners and the United States have consented to the filing of this brief. Respondents, Ray Mabus, Governor of the State of Mississippi, *et al.*, have denied consent.

LDF is a non-profit corporation organized under the laws of the State of New York. It was formed to assist black citizens in securing their rights under the Constitution. LDF has significant interests in this litigation. LDF has litigated extensively in the area of school desegregation.* It litigated the five cases whose interpretation is directly involved in determining a state's obligation to dismantle a formerly *de jure* segregated system of higher education -- the central issue raised in these petitions.

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* Further description of the interests of *amicus* LDF appears at pages 2-5 of the attached brief, including a description of LDF's history of involvement in school desegregation litigation.

LDF believes that the decision entered below is in error and will have substantial adverse effects on the educational opportunities for black citizens that LDF's litigation seeks to expand. Because of the direct effect on LDF's litigation efforts and LDF's extensive involvement in the development of the law in this area, LDF's participation as *amicus curiae* in this case will be of assistance to the Court.

Respectfully submitted,

/s/ Janell M. Byrd

Janell M. Byrd
NAACP Legal Defense and
Educational Fund, Inc.
1275 K Street, N.W.
Suite 301
Washington, DC 20005
(202) 682-1300

*Julius LeVonne Chambers
Charles Stephen Ralston
Norman J. Chachkin
NAACP Legal Defense and
Educational Fund, Inc.
99 Hudson Street
16th Floor
New York, NY 10013
(212) 219-1900

Counsel for Amicus Curiae
**Counsel of Record*

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Nos. 90-6588 and 90-1205

In the
Supreme Court of the United States
October Term, 1990

Jake Ayers, Jr., *et al.*,

and

United States of America,

Petitioners,

vs.

Ray Mabus, Governor,
State of Mississippi, *et al.*

BRIEF OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONS FOR WRITS OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Interest of the NAACP Legal Defense Fund As *Amicus Curiae*

The NAACP Legal Defense and Educational Fund, Inc.

(LDF) is a non-profit corporation established to assist African

American citizens in securing their constitutional and civil rights. LDF historically has had and continues to have a major role in litigation efforts challenging discrimination and segregation in education.[1]

The interests of LDF are significant in this case. LDF successfully litigated the first court challenge to racial segregation in Mississippi's higher education system, *Meredith v. Fair*, 305 F.2d 343 (5th Cir.), *cert. denied*, 371 U.S. 828 (1962). The central question presented here regarding the scope of a state's duty to desegregate a formerly

[1] *See, e.g., Brown v. Board of Education*, 347 U.S. 483 (1954). LDF represented the plaintiffs in the litigation that resulted in the initiation of desegregation efforts in public higher education systems in 18 states, including the State of Mississippi. *Adams v. Richardson*, 356 F. Supp. 92 (D.D.C.), *modified and aff'd unanimously en banc*, 480 F.2d 1159 (D.C. Cir. 1973), *dismissed sub nom. Women's Equity Action League v. Cavazos*, 906 F.2d 742 (D.C. Cir. 1990). Other LDF higher education desegregation cases include: *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950); *Adams v. Lucy*, 228 F.2d 619 (5th Cir. 1955), *cert. denied*, 351 U.S. 931 (1956).

de jure segregated system of higher education involves the interpretation of five cases litigated by LDF.[2]

As a result of litigation brought by LDF,[3] in 1978 the Office for Civil Rights of the United States Department of Health, Education and Welfare (HEW)[4] promulgated remedial standards for desegregating formerly *de jure* state systems of higher education pursuant to the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. The "HEW Guidelines" imposed an "affirmative duty to take effective steps to eliminate the *de jure* segregation," and required "more than mere abandonment of discrimination

[2] *Bazemore v. Friday*, 478 U.S. 385 (1986); *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968); *Geier v. Alexander*, 801 F.2d 799 (6th Cir. 1986); *Norris v. State Council of Higher Education for Virginia*, 327 F. Supp. 1368 (E.D. Va.), *aff'd mem.*, 404 U.S. 907 (1971); and *Alabama State Teachers Association v. Alabama Public School and College Authority*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969).

[3] *Adams v. Richardson*, *supra* note 1.

[4] The Department of Education subsequently was substituted for HEW in the litigation.

through the state's adoption of passive or race neutral policies."[5]

Under these standards, as well as decisions of several federal courts, progress toward equal opportunities in higher education for African Americans began to be made. Some states moved not just to open the doors of formerly white institutions, but also took gradual steps to enhance their long-neglected and under-funded historically black colleges, which continue to educate a substantial portion of black college students.[6]

This litigation marks the first time that the Court of Appeals for the Fifth Circuit *en banc* has considered the duty owed by formerly *de jure* states in higher education. Instead of requiring the progress that has occurred elsewhere,

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[5] Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education, 43 Fed. Reg. 6658 (Feb. 15, 1978) reprinted in the Ayers Petitioners' Appendix ("Ayers App.") A90.

[6] *Id.* at 6660, Ayers App. A92.

however, the decision in *Ayers v. Allain*, 914 F.2d 676 (5th Cir. 1990) (*en banc*), effectively cuts off the desegregation process. The court below requires only that formerly *de jure* segregated state systems of higher education implement what are described as good faith, race-neutral policies. In so holding the court ignored the massive overlay of entrenched disadvantage and inequity caused by the vestiges of the prior, overtly dual system and the consequent continued existence in Mississippi, in practice if not in theory, of the dual system.

Because of the important goal of providing full educational opportunity for African American citizens free from the vestiges of past discrimination and segregation, LDF urges the Court to grant the pending petitions for *certiorari* in order to reverse the *Ayers* decision.

STATEMENT OF RELEVANT FACTS[7]

Opportunities for higher education for freed slaves and their descendants following the Civil War were first provided in Mississippi in 1878, when the Mississippi State Legislature designated Alcorn Agricultural and Mechanical College for the education of black youth (United States' Appendix "U.S. App." 110a-11a). Since 1844, the State had operated the University of Mississippi, which was solely for white persons. The same year that Alcorn was designated for African Americans, the state established Mississippi Agricultural and Mechanical College (later Mississippi State University) for white persons only.

Thereafter, the State established the Mississippi University for Women for whites in 1884, the University of Southern Mississippi for whites in 1910, Delta State

[7] We adopt the detailed factual review provided by the Ayers petitioners.

University for whites in 1924, Jackson State University for the training of black teachers for black public schools in 1940, and Mississippi Valley State University for the training of black teachers and for vocational training for black students in 1946.[8]

That funding and support for the institutions dedicated for the education of African Americans was grossly inferior to that for whites is undisputed.[9] That this severely and adversely affected the quality of life for Mississippians of African descent is admitted by the State.

[8] U.S. App. 109a-114a.

[9] U.S. App. 65a-66a, 151a-52a; Bureau of Education, United States Department of the Interior, *Survey of Negro Colleges and Universities* 416-17 (1928) (Alcorn A & M "is largely a school of preparatory grade, concentrating its efforts on vocational and manual training. . . . [It] is lacking a properly qualified teaching staff and educational equipment for standard college work."). For a review of the grossly disparate funding provided public institutions for blacks during the "Jim Crow" era and thereafter *see also generally* Kujovich, *Equal Opportunity in Higher Education and the Black Public College: The Era of Separate But Equal*, 72 Minn. L. Rev. 29 (1987); W.E. Trueheart, *The Consequences of Federal and State Resource Allocation and Development Policies for Traditionally Black Land-Grant Institutions: 1862-1954* (University Microfilms International, Ann Arbor, Michigan 1979); Payne, *Forgotten . . . but not gone: The Negro Land-Grant Colleges*, Civil Rights Digest 12 (Spring 1970).

> [W]hen the 1945 survey was made there were 22 times as many white doctors in Mississippi in proportion to the white population as Negro doctors in proportion to the Negro population; 13 times as many dentists, 5 times as many pharmacists, 420 times as many lawyers, and 40 times as many social workers.
>
> . . .
>
> From 1948-1953, the institutions for white students in the State conferred 14,205 degrees, one for every 131.1 white persons in the population; whereas the colleges for Negroes conferred 1,268 degrees, or one for every 778.1 Negroes in the total population.[10]

In 1980, African Americans comprised 35.4 percent of the total population of Mississippi, and 41.3 percent of all person ages 16-21 in the State (Ayers App. A113-117). Nonetheless, in 1984-85, African Americans received 23.9 percent of all undergraduate degrees and 20.6 percent of graduate degrees. Only 4.4 percent of the law degrees awarded during the period 1982 to 1986 went to African Americans. Of the medical and dental degrees awarded in

[10] "Higher Education in Mississippi," Board of Trustees of State Institutions of Higher Learning of the State of Mississippi (Ayers App. A102-04).

1985-86, only 4.5 percent went to African Americans. (Ayers App. A179-204.) The poverty rate for African Americans in Mississippi in 1980 was 44.4 percent compared to 12.6 percent for whites (Ayers App. A114-116).

Educational opportunities for African Americans in Mississippi today are directly reflective of and limited by Mississippi's history of race discrimination and segregation in its education system.[11] Today, African American students continue to be channelled systematically to the historically black institutions,[12] and pursuant to "mission designations"

[11] Disparities in the quality of the educational offerings at historically black institutions (HBIs) and historically white institutions (HWIs) are well documented and continue at every level as proved at trial: level of faculty education (U.S. App. 55a); faculty salaries (U.S. App. 56a), program offerings (U.S. App. 57a-61a); funding (U.S. App. 66a); and facilities (U.S. App. 68a). These inequities in higher education simply extend the inequities spawned in Mississippi's longstanding dual system at the elementary and secondary level of education. *See, e.g., United States v. Hinds County School Board*, 417 F.2d 852 (5th Cir. 1969), *cert. denied*, 396 U.S. 1032 (1970), *delaying order reversed sub nom. Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969).

[12] Shortly after the court ordered the admission of James Meredith to the University of Mississippi in 1962, the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi and the HWIs adopted a new admissions requirement of a score of 15 on the ACT, a

(continued...)

tied directly to prior inequities resulting from overt discrimination, financial support continues to be channelled disproportionately to the historically white institutions.[13]

Thus, hardly a dent has been made in Mississippi's entrenched racial caste system in higher education.[14] Yet the Court of Appeals for the Fifth Circuit ruled that Mississippi need do no more than adopt good faith, race-neutral policies,

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[12](...continued)
standardized college admission examination. The purpose of this change was to deter black enrollment. (U.S. App. 51a.) Despite strong evidence that the ACT should not be used as the sole criterion for admission and the existence of better predictors of success in college with less adverse effect on black students, the HWIs continue to rely exclusively on the ACT. Racially identifiable student enrollments (U.S. App. 50a-51a) and racially identifiable faculties (U.S.App. 56a), continue to correspond strongly with the original racial designation of each institution.

[13] The *en banc* court found that the "mission designations had the effect of maintaining the more limited program scope at the historically black universities," (U.S. App. 31a), and that "the disparities are very much reminiscent of the prior system. The inequalities among institutions largely follow the mission designations" (U.S. App. 37a). See also U.S. App. 66a.

[14] Mississippi is among the states most recalcitrant to higher education desegregation efforts, requiring the United States to sue the state for its failure to adopt adequate desegregation measures. The desegregation plan adopted by the state has always been under-funded (U.S. App. 58a).

irrespective of results.[15] Mississippi is not required to take affirmative measures to correct its wrong; black citizens are not entitled to an effective remedy.

SUMMARY OF THE ARGUMENT

This is a case of tremendous importance. Higher education has increasingly become the key to breaking the cycle of poverty, gaining full employment in the growing technical and highly skilled workforce, and developing healthy, responsible and productive communities. Equal access to this education free from the burdens and limitations of past and present discrimination and segregation is essential if African Americans are to enjoy the full rights and privileges to which all citizens are entitled.

This Court should grant the petitions for writ of *certiorari* because of the conflict in the circuits regarding the

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[15] U.S. App. 2a.

duty to correct state-mandated, separate and inferior educational systems for blacks, the broad impact of the case, the legal error committed below, and the real and substantial harm caused if the *Ayers* decision is allowed to stand.

ARGUMENT

Prior to and following *Brown*, the federal courts made some efforts to open the doors of formerly all-white higher education institutions to "qualified" minority students.[16] This Court, however, has never actually examined the dimensions of the problem created by decades of no higher educational opportunities for African Americans followed by drastically inferior opportunities and mandatory segregation throughout the Southern and border state systems of higher education.[17]

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[16] *See, e.g., supra* note 1.

[17] As late as 1940, seventy-seven percent of the nation's African American population resided in the seventeen southern and border states and comprised twenty-two percent of the region's population. But the ten million African Americans in the region received less than four percent of (continued...)

The Court has not explored the necessity for remedies to eliminate the vestiges of those higher education systems in the same way that it has for elementary and secondary schooling in the series of decisions from *Brown v. Board of Education*, 349 U.S. 294 (1955) (*Brown II*), to *Board of Education of Oklahoma City Public Schools v. Dowell*, 111 S. Ct. 630 (1991). It is necessary and appropriate that the Court address these issues in this case.[18]

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[17](...continued)
the federal land grant monies allocated to these states. Overall these African American citizens were limited to colleges receiving just over five percent of total expenditures for public higher education. In eight states, accounting for forty percent of all African Americans in the nation, there were no accredited public colleges available to persons of African descent. *Kujovich, supra* note 9 at 98-101.

[18] It is essential that the Court fully hear this case and not limit the grant of the private plaintiffs' petition to specified questions. This will ensure that the Court has the benefit of a thorough discussion of all record facts and evidence that will be useful in considering the legal questions presented. Additionally, this will provide the Court the flexibility to determine after briefing on the merits and oral argument whether it is necessary to decide all issues.

Not only is there a conflict in the circuits,[19] legal error by the court below,[20] and broad impact[21] as explained in the

[19] The decision of the Fifth Circuit *en banc* in *Ayers* conflicts with the Sixth Circuit decision in *Geier v. Alexander*, 801 F.2d 799 (6th Cir. 1986).

[20] The standard applied in school desegregation cases heretofore has been one where the state actor has an affirmative duty to dismantle the formerly *de jure* segregated system "root and branch," by eliminating all vestiges of the dual system to the extent practicable. *See Board of Education of Oklahoma City Public Schools v. Dowell*, 111 S. Ct. 630 (1991); *Wright v. Council of City of Emporia*, 407 U.S. 451 (1972); *United States v. Scotland Neck City Board of Education*, 407 U.S. 484 (1972); *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968); Revised Criteria for Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Higher Education, 43 Fed. Reg. 6658 (Feb. 15, 1978). While the methods of desegregating or eliminating the vestiges of past discrimination in higher education systems will be not be identical to those employed in elementary and secondary school systems, the obligation of a state with a *de jure* history to eliminate those vestiges is just as exacting in higher education as it is at the elementary and secondary level. *See Ayers v. Allain*, 914 F.2d at 692 (Goldberg, J., dissenting); *id.* at 693 (Higginbotham, J., concurring in part and dissenting in part); *Geier v. Alexander*, 801 F.2d at 802; *Geier v. University of Tennessee*, 597 F.2d 1056, 1065 (6th Cir.), *cert. denied*, 444 U.S. 886 (1979); *United States v. Louisiana*, 692 F. Supp. 642, 653-58 (E.D. La. 1988) (*per curiam*, three-judge district court), *order vacated*, 751 F. Supp. 606 (E.D. La. 1990) (pursuant to *Ayers*); *Lee v. Macon County Board of Education*, 267 F. Supp. 458, 474-75 (M.D. Ala.) (*per curiam*, three-judge district court) (state colleges have an "affirmative duty to effectuate the principles of *Brown*"), *aff'd sub nom. Wallace v. United States*, 389 U.S. 215 (1967). *See also Milliken v. Bradley*, 433 U.S. 267, 280 (1977) (decree "must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct'" [citations omitted]); *United States v. Louisiana*, 380 U.S. 145, 154 (1965) (remedy should be shaped "so far as possible to eliminate the discriminatory effects of the past as well as bar like discrimination in the future").

petitions for *certiorari*, but the special and important nature of this case to the Nation's history and its will to correct serious constitutional wrongs justifies granting the writ.

With respect to higher education, the Court is in much the same position now as it was in 1954 with respect to elementary and secondary education. At that time, in *Brown*, the Court said:

> In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.
>
> Today, education is perhaps the most important function of state and local governments. . . . It is

[21] The impact extends beyond the states of Mississippi, Louisiana and Alabama, which are all currently involved in litigation. Numerous other state systems, including Maryland, Kentucky, Texas, and Pennsylvania, are pending before the Department of Education, Office for Civil Rights, for a determination whether they have satisfied their duty to dismantle formerly *de jure* segregated systems of higher education. A determination from the Court of the proper standard would apply to these states in administrative proceedings as well.

> required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship.

347 U.S. at 492-93.

In the thirty-six years since *Brown*, a college education has become a necessary prerequisite, not only to attain upper level jobs, but for basic employability in large numbers of positions with employers that increasingly require a highly skilled and intelligent workforce. As the three-judge district court stated in *United States v. Louisiana*, 692 F. Supp. 642 (E.D. La. 1988):

> In vast, ever-growing segments of the American workforce, a high school diploma is not enough; a college education is often more critical than a high school education. The argument that the State requires students to attend primary and secondary school but cannot, or at least does not, require them to attend college fails to acknowledge the realities of our nation today. The purpose for a State's broad police power to enact truancy and other regulatory school laws . . . is to promote an educated, self-supporting citizenry that can effectively and intelligently participate in our society. . . . [T]hese underlying interests of American society are what compel persons to seek higher education on their own volition. If blacks and other minorities are to

> compete in the market place for more attractive and higher paying jobs in business and industry and to avail themselves of the benefits of corporate affirmative action programs, they need a college degree.

Id. at 656-57 (citations omitted).

Because higher education has become a public necessity today much in the same way that elementary and secondary education had become a public necessity by 1954, it is essential that every citizen have access to higher education free from the vestiges and limitations posed by past and continuing racial discrimination and segregation.

At a time when progress in attaining that goal is just beginning, the *Ayers* decision erects a solid barrier to further advancement. The Fifth Circuit's finding of compliance where a state has done nothing but adopt "good faith, race-neutral policies,"[22] simply *locks in* existing, very substantial vestiges of past discrimination and segregation. It is ironic

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[22] Mississippi falls short of even that low standard given its discriminatory use of ACT scores and mission designations.

that this barrier to further progress has been erected for Mississippi, Louisiana, and Texas,[23] several of the states that have been the most resistant to desegregating their higher education systems.

The *Ayers* decision is contrary to this Court's requirement that affirmative and effective measures be used to dismantle segregated school systems.

> [W]here a dual system was compelled or authorized by statute at the time of our decision in Brown v. Board of Education, . . . the State automatically assumes an affirmative duty 'to effectuate a transition to a racially nondiscriminatory school system, . . . that is, to eliminate from the schools within their school system 'all vestiges of state-imposed segregation.'

Keyes v. School District No. 1, 413 U.S. 189, 200 (1973) (citations omitted). "Any other approach would freeze the status quo that is the very target of all desegregation processes." *McDaniel v. Barresi*, 402 U.S. 39, 41 (1971).

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[23] Texas operates under a desegregation plan entered with the Department of Education but also has been sued by private plaintiffs under state law in *League of United Latin American Citizens v. Clements*, No. 12-87-5242-A, filed December 2, 1987 (107 Dist. Ct., Tex.).

If left intact the *Ayers* decision will assure that the consequences of the serious and longstanding constitutional violations in the critical area of higher education will continue uncorrected and with incalculable harmful effects on the lives of African American citizens.

CONCLUSION

For these reasons, LDF urges the Court to grant both petitions for writ of *certiorari*.

Respectfully submitted,

Janell M. Byrd
NAACP Legal Defense and
Educational Fund, Inc.
1275 K Street, N.W.
Suite 301
Washington, DC 20005
(202) 682-1300

*Julius LeVonne Chambers
Charles Stephen Ralston
Norman J. Chachkin
NAACP Legal Defense and
Educational Fund, Inc.
99 Hudson Street
16th Floor
New York, NY 10013
(212) 219-1900

Counsel for Amicus Curiae
**Counsel of Record*

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No. 90-6588
No. 90-1205

In The
Supreme Court of the United States
October Term, 1990

Jake Ayers, Jr., et al.,
Petitioners

United States of America
Petitioners

v.

William Allain, Governor
State of Mississippi, et al.
Respondents

TO BE REPRINTED

MOTION OF FORMER BLACK STUDENTS OF THE UNIVERSITY OF MISSISSIPPI FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS AND BRIEF

Willie J. Perkins, Sr.
301 E. Market Street
Greenwood, MS 38930
(601)455-1211
[Counsel of Record]

Gail P. Thompson
P.O. Box 1804
Oxford, MS 38655
(601)234-6103

MOTION OF FORMER BLACK STUDENTS
OF THE UNIVERSITY OF MISSISSIPPI
FOR LEAVE TO FILE BRIEF AMICUS
CURIAE IN SUPPORT OF PETITIONERS

The moving parties, 17 Afro-American students who formerly attended the University of Mississippi, move for leave to file the attached brief supporting the petitioners' requests for review of the decision of the Court of Appeals for the Fifth Circuit (en banc) in this case.

The private plaintiffs have consented to the filing of this brief. As of the final preparation of this brief, the United States and the respondents had yet to state positions.

The moving parties, six of whom testified at the 1987 trial in this case, desire to draw this Court's attention to evidence in the record showing that they and other Afro-American citizens attending the University of Mississippi have been the subject of extensive

harassment. This evidence demonstrates that Afro-American citizens have not had "real free choice" to attend the University of Mississippi, and, more generally, that the vestiges of discrimination persist at the state's first university.

The highly relevant material addressed in the attached brief has not been brought to this Court's attention by the petitioners. Therefore, amici's participation will be of assistance to the Court.

Respectfully submitted,

Willie J. Perkins, Sr.
301 E. Market Street
Greenwood, MS 38930
(601)455-1211
[Counsel of Record]

Gail P. Thompson
P.O. Box 1804
Oxford, MS 38655
(601)234-6103

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Interest of the Amici Curiae

The amici curiae are 17 former Afro-American students of the University of Mississippi, namely:

Veronica Anderson	Connie Greene
Nancy Bailey	John Hawkins*
Stacy Bracy*	Thomasine Hill
Charles Brewer	Brenda Luckett
Mary Brown	Albert Miller
Linda Campbell*	George Neal
Don Cole	Lydia Spragin*
James Gilleylen*	Gail P. Thompson
	Ronnie Wiley

The amici's interest is to bring relevant matter in the trial record to this Court's attention in the hope that this will lead to this Court's granting review and, ultimately, requiring the elimination of racially discriminatory barriers at the university. An asterisk in the above list designates those persons who testified at the trial.

The amici are proud Afro-American citizens who chose the University of

Mississippi as the institution to further their studies. As the evidence summarized below demonstrates, they were confronted with a hostile and war-like environment that undermined their constitutional rights to education free of racial discrimination.

Amici, as with other alumni, have a continuing interest in the university which they attended. As alumni and members of the Afro-American community, amici seek to insure that their future contacts with the university, as well as those of Afro-American youth who choose to attend the University of Mississippi, are productive, peaceful, and dignified.

Reasons for Granting the Writs

Amici submit this memorandum to call to the Court's attention elements of the

record in which they have a special interest. In brief, this evidence -- of continuing harassment of Afro-American citizens enrolled at the University of Mississippi, and inadequate responses by the school -- demonstrates, as applied to that school, the patent falsity of the lower court's assertion "that all students have real freedom of choice to attend the college or university they wish...." Ayers v. Allain, 914 F.2d 676, 678 (5th Cir. 1990) (en banc). Moreover, the same evidence establishes that those Afro-Americans who do attend the University of Mississippi have been denied the peaceful atmosphere and dignified treatment which is their due.[1]

---

[1] The following summary of the record also shows why amici are absolutely appalled that one reading the 41-page trial court opinion can not even determine that there was substantial testimony of harassment [see Ayers v. Allain, 674

Summary of Relevant Facts Concerning the University of Mississippi

Statistics admitted at the trial and testimony by two experts offered by the state provide a context for the evidence of harassment. We begin with the statistics.

In 1985-86, Afro-American students constituted 30.5% of all persons enrolled in Mississippi's eight universities. USX 880. In that year, the "first-time freshmen" enrollment of the University of Mississippi was only 4.7% Afro-American and total undergraduate enrollment included only 5.9% of this group. Id.[2]

F. Supp. 1523, 1558 (N.D. Miss. 1990)] and that the en banc majority "swept the problem under the rug." See Ayers v. Allain, 914 F.2d at 691 (reference, without any detail, to "racial incidents at the University of Mississippi").

[2] Of the other universities, Mississippi State University had the next smallest Afro-American enrollment, i.e., 13.4% "first-time freshmen" and 11.3%, all undergraduates. Id.

The evidence confirmed the obvious relationship between the level of minority enrollment at a university and the treatment of its minority students. Dr. John Millett, former chancellor of the Ohio Board of Regents, testified for the defendants. His cross-examination included the following exchange. (Tr. 3010):

> Q: Would you see harmony on the campus for black students who were at a historically white institution as important in terms of that institution's ability in the future to increase its percentage of black students?
>
> A: Yes.

The defendants' expert Dr. Bernard Siskin offered a more direct connection between the statistical evidence and the evidence of harassment. He compared the enrollments by race of the five historically white universities and what

he termed "the qualified pools." Tr. 4218-19. Siskin found statistically significant disparities between enrollment and the "qualified pools" for the University of Mississippi for both years of his analysis, and Mississippi State University for the last year. Tr. 4219, 4275. Siskin testified that

> [w]ith respect to the University of Mississippi, I would conclude that there is something in the process in blacks in the qualified pool being less likely to attend and showing up at the University of Mississippi than whites in the qualified pool. Tr. 4219.

Siskin agreed that black persons were "uncomfortable" about the University of Mississippi. Tr. 4307.

The trial evidence revealed that black students at the University of Mississippi faced anything but "harmony," as well as the precise reason for

"discomfort" about applying there. The following are examples of mistreatment drawn from the trial record.

James Gilleylen (undergraduate and graduate education spanning period from 1976 to 1983) testified about receiving an "F" on an English theme discussing his earlier educational experiences. He wrote that black youth received "the textbooks that the predominantly white schools had used previously, that were all worn out and outdated...." When Gilleylen inquired about his grade, his instructor explained that

> black people have an inherent problem in terms of their mastering the English language. You have problems in terms of being able to write and speak. Problems with the spoken language, as well as the written language. She told me that automatically I got a D when she read my topic, and that it went down hill from there.

Gilleylen had a similar experience with another instructor.[3] See Tr. 2659-64.

In a graduate program, a professor informed Gilleylen's class "[not] to place too much credence in the census data, because it was collected by a bunch of -- in his words -- 'unemployed illiterate black folk,' and then proceeded to tell [him], being the only black student in the class, that perhaps Mr. Gilleylen can further expand on that since he is much closer to the situation than the rest of us." Tr. 2679. The

[3] "[French instructor] said that she could give [Gilleylen] very little direction because, one, we all understand that black people have problems with the English language, and therefore, it is not expected that we would be able to master a foreign language.

What she suggested to me, in her opinion, she said was her best suggestion is that I select a major that did not require a foreign language as a requirement and, therefore, I would not have to do any -- I would not have to deal with that sort of problem." Tr. 2664.

same professor at times greeted Gilleylen in the hall, privately, as he arrived for class: "...well, I guess we can start, the 'nigger' has arrived." Tr. 2681.[4]

Ms. Linda Campbell (1975-79) testified about a series of discriminatory practices by a professor, whom she identified. Black students were given less favorable clinical assignments and the more difficult elements of joint reports. The professor was "[a]t one point...either counseling black students to choose another major or enrolling them in the therapy because she said that black people couldn't talk and, therefore, if we were going to work as speech language pathologists we needed to receive therapy ourselves." See Tr.

[4] Gilleylen identified each perpetrator; none was offered in rebuttal.

2709, 2717-19.

Ms. Lydia Spragin (1979-93) testified that "the policy [sic] department at the University of Mississippi offered no support to [black] students. We were being harassed on campus." She testified that she

> got slapped in the face with a confederate flag ["in the middle of the university"]. University Police Department was standing on the corner and people were driving by in red convertibles yelling, 'nigger, nigger,' and they could see that I was being harassed, but they didn't come over to stop it....

See Tr. 2741-42, 2750-51.

Lydia Spragin and John Hawkins (1980-84) testified about a terrifying event after Hawkins, elected to be the first black cheerleader at the university, declined to "carry the rebel flag," a tradition for cheerleaders at

the school. A large, menacing mob of white students gathered initially where they thought the Black Student Union was meeting and then at Hawkins' fraternity. See Tr. 2752-54, 2777-82. Hawkins also testified that he was the victim of a steady stream of other harassment, including death threats. Yet, his requests to the university president and chief of police for protection were unavailing. Tr. 2783-84.

Ms. Stacey Louise Bracey, an undergraduate as of the trial and the elected President of the Black Student Union, testified about the repercussions of the Union's endorsing a slate of white persons who had been "working in the best interests of black students..." for elected positions. "There was a lot of backlash from that. There were threats

to both myself and Phyllis Keyes, who was the President of the BSU at that point in time." Tr. 2789-90, 2793.

There was testimony about racially offensive articles in the university's campus newspaper, the Daily Mississippian. Tr. 1438-39, 2761-62, 2766-68. Some of the Amici were also offended, understandably, when the 1983 Ole Miss yearbook prominently displayed pictures of the Ku Klux Klan marching on the campus. See inside back cover.

That the ill-treatment of Afro-American students had an impact rests on more than statistics and common sense. Pam Gordon, an Afro-American resident of Oxford, the location of Ole Miss, testified that she did not apply to the university, despite her strong credentials, "because of the reputation

of it being unfair to black students...." Two incidents which concerned her were "the near riots" when John Hawkins refused to take the "rebel flag" and "the Klan march." Tr. 2542-44.

The Decision Below is Inconsistent with Controlling Principles Established by this Court

The lower courts' treatment of the evidence concerning harassment at the University of Mississippi, was, as shown below, inconsistent with controlling principles established by this Court. Therefore, the decision below should be reviewed. See Supreme Court Rule 10.1(c).

Relatively few persons of a group will seek out a school setting where they will face, for example, embarrassment, heinous treatment, and grades making more

difficult the attainment of further educational opportunities and employment. In view of the content of the record, admission to the University of Mississippi was not marked by "wholly voluntary and unfettered choice of private individuals." Bazemore v. Friday, 478 U.S. 385, 407 (1986).

Litigation, federal troops, and other advocacy did not earn Afro-American citizens the right merely to walk on the University of Mississippi campus. It earned them the right to a peaceful, nondiscriminatory education, and dignified treatment. See Cooper v. Aaron, 358 U.S. 1 (1958); see also Morgan v. McDonough, 540 F.2d 527, 532-33 & n.6 (1st Cir. 1976), cert. denied, 429 U.S. 1042 (1977).

This Court recently reiterated that

where officials are responsible for the practice of systemic racial discrimination in the delivery of public education, a relevant inquiry is "whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." Board of Education v. Dowell, 59 U.S.L.W. 4061, 40064-65 (Jan. 15, 1991) (footnote omitted). Here, the continuing limited access of black students to the University of Mississippi is one vestige of discrimination. See Ayers v. Allain, 674 F. Supp. at 1551. Moreover, the mistreatment of black citizens enrolled at the university by white staff and students is an obvious example of harm due to "habits of speech, conduct, and attitudes," which are the product of discriminatory state action [Milliken v. Bradley, 433 U.S. 267, 287

(1977)] and must be the subject of particular remedies. Id. at 288.

Conclusion

The petitions for review filed by the private plaintiffs and the United States should be granted.

Respectfully submitted,

Willie J. Perkins, Sr.
301 E. Market Street
Greenwood, MS 38930
(601)455-1211
[Counsel of Record]

Gail P. Thompson
P.O. Box 1804
Oxford, MS 38655
(601)234-6103







despair in Mississippi, to [illegible] has ever. Think that the [illegible] heroes are named Hammerhead and Buford Michael and Carlos, Eric and Luciano, and that many human problems remain to be solved.



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In The
Supreme Court of the United States
October Term, 1990

Jake Ayers, Jr., et al.,
Petitioners

United States of America,
Petitioners

v.

William Allain, Governor
State of Mississippi, et al.
Respondents

REPLY BRIEF OF PRIVATE PETITIONERS

Alvin O. Chambliss, Jr.*
North Mississippi Rural
Legal Services
P.O. Box 928
Oxford, MS 38655
(601)234-2918

Lawrence Young
North Mississippi Rural
Legal Services
P.O. Box 767
Oxford, MS 38655
(601)234-8731

Robert Pressman
Center for Law and Education
955 Massachusetts Avenue
Cambridge, MA 02139
(617)876-6611

*Counsel of Record

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The Petitions for Writs of Certiorari Should be Granted

I. The Significant Issues Involved In This And Other Pending Cases Should, For The First Time, Be Settled By This Court

Beginning with Brown v. Board of Education, 347 U.S. 483 (1954), this Court has on at least 24 occasions given plenary consideration to issues concerning the elimination of racial discrimination in public elementary and secondary schools. See Attachment at A.1-2. Moreover, review was recently granted in a twenty-fifth instance. Id. at A.2. The great issues involved in this case -- which also arise in current litigation in Louisiana and Alabama, as well as other states subject to Title VI standards -- deserve plenary treatment for the first time. A fair conclusion based upon the difficulty which the lower courts have had in applying Bazemore v. Friday, 478 U.S. 385 (1986)[1] is that respondents' approach in opposing the granting of review involves resolution of very significant issues by speculative extrapolation from precedent, not application of rules "settled by this Court."

II. The Petitions Focus Upon The Correct Application Of Legal Principles To The Material Facts

The respondents contend in part that review should be denied because petitioners seek merely a third opportunity to secure acceptance of their views of the facts. Respondents' Opposition at 11, 13. They write: "Review by this Court is unnecessary

[1] See private plaintiffs' Petition at 24.

since petitioners are entitled to no relief on this record regardless of whether Bazemore is strictly applied or some more 'exacting' standard under Green is invoked (at 11)." This contention does not withstand scrutiny. The lower courts erred in applying (or refusing to apply) legal principles to the material facts, whichever of the three general approaches advanced by the parties is deemed to be applicable.

A. The Material Facts

The respondents' approach to the facts, petitioners respectfully submit, is to advance "the trees" to mask "the forest." Petitioners, therefore, briefly summarize the material facts as of the trial (set forth at greater length in their petition at 4-11), as follows:

- The problem of lack of parity in black citizens' participation in the system of higher education -- which the defendant-Board identified as a consequence of discrimination (Petit. at 3, n.4) -- persists. See Petit. at 4-5.

- The en banc majority stated (Ayers III, A.85):[2]

> The district court incorrectly concluded that the disparities among the institutions were not reminiscent of the former de jure system. Ayers I, 674 F. Supp. at 1560. On the contrary, the disparities are very much reminiscent of the prior system....

[2] Citations are to private petitioners' appendix.

Thus, 70% of the black students in the system, who were attending Historically Black Institutions (A. 137), at which defendants' policies and practices had promoted their enrollment (see Petit. at 14 - 17), continued to receive, due to state action, educations tainted by racial discrimination.

- Less than one of each 100 white undergraduates attended a historically black institution (see Petit. at 5) -- precisely what one would expect given the finding on lingering disparities.

- Similarly, only one of each 33 white graduate students attended a historically black institution. See Petit. at 5.

- With reference to possible future progress, the en banc court found with regard to the institutional mission designations adopted in 1981, after discrimination had produced institutional disparities (Ayers III, A. 83):

> The record...supports the plaintiffs' argument that the mission designations had the effect of maintaining the more limited program scope at the historically black universities....

- Only two black persons, in total, had been employed at the highest administrative levels of the five white institutions despite considerable turnover (see Petit.

at 6-7), continuing both the exclusion of black persons from a fair role in governance of the system and the pernicious messages of exclusion.

- Almost 98% of administrators were placed in accordance with the traditional racial designations (see Petit. at 6) -- to which defendants respond by citing district court findings of neutrality in policies and procedures and affirmative action. Opp. at 3, 7.[3]

- The five white institutions employed a total of only 60 black faculty members, a figure exceeded by each of the three historically black institutions alone. See Petit. at 7.

- The white institutions and their students were the beneficiaries of better funding, a factor explained by a criterion shaped by discrimination. See Petit. at 9-10.[4]

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[3] While the focus here is not intent, there is as much chance that neutrality and affirmative action produced the facts which petitioners cite about administrators as there was that it just happened that Alabama legislation changed the boundaries of Tuskegee from square to "a strongly irregular twenty-eight sided figure" thereby "remov[ing] from the city all save four or five of its 400 Negro voters while not removing a single white voter or resident." See Gomillion v. Lightfoot, 364 U.S. 339 (1960).

[4] To be sure, some black students shared in higher expenditures at white institutions. Opp. at 7-8. However, Dr. Leslie, the funding expert, testified about funding for all white versus all black students on a true average basis. Tr. 581-84.

- The defendants utilized a racially discriminatory testing requirement for admission from 1961 to 1977, at minimum. See Petit. at 12-13. Judged by correct standards, this discrimination continues to the present. See Petit. at 44-48.

B. The Defendants Can Not Be Held To Have Fulfilled The Remedial Obligation Elucidated In Green And Other Decisions

The defendant Board contends that the record warrants dismissal even if a "more 'exacting' duty to disestablish arguably applicable under Brown and Green" applies. Opp. at 21-24. This is not the case.

If as private petitioners contend, the classical approach articulated in Green and other cases applies (see Petit. at 27-41), the issue is not merely whether defendants have engaged in some affirmative action. Opp. at 22-23.[5] It is instead whether taking account of "every facet of school operations" subject to discrimination, "the vestiges of past discrimination ha[ve] been

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"In 1986, the student gap was 1840 dollars..." with white students favored. Tr. 584.

[5] The respondents overstate the extent of their remedial efforts. The en banc court found that "disparities among the institutions" persist and that the mission designations freeze in this pattern. Ayers III, A.83,85. Thus, their recruitment efforts sought to draw students and staff to schools with "disparities" "very much reminiscent of the prior [discriminatory] system," as well as schools racially identifiable by reason of staff allocation. See Petit. at 19, n.25, 20-21, n.28. The defendants' funding formula did not include any factor based on the premise that earlier funding was not equitable to historically black institutions and their students. A. 171-72.

eliminated to the extent practicable." Board of Education of Oklahoma City v. Dowell, ___ U.S. ___ (Jan. 15, 1991), 111 S.Ct. 630, 638; see also Petit. at 27-29. Manifestly, no affirmative answer to this question is possible where (i) the current configuration of the elements of the system explicitly found to be subject to discrimination (A.6,29) is so racially skewed (see supra) and (ii) there has been no remedy proceeding. The fact, previously emphasized by private petitioners, that the district court expressly denied respondents' motion seeking "a single trial" addressing liability and remedy (Petit. at 1-2, n.2) is unchallenged.[6]

A focus on remedy may not be discounted in advance as insignificant. There are remedies to consider, including detailed criteria formulated by the U.S. Department of Education, (see Petit. at 18, n.23 and A.90-96); and proceedings could encompass, as necessary: a requirement that the defendants prepare and file a remedial plan,[7] incorporation of proposals from plaintiffs and their experts,[8] the court's reliance on its

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[6] Nevertheless, respondents repeatedly argue as if it had been fairly decided that nothing more could be done. Compare Opposition at 3, 6, 18, 22-23 and Petition at 48-49.

[7] E.g., Brown v. Board of Education, 349 U.S. 294, 301 (1955); Dowell v. School Board of Oklahoma City Public Schools, 219 F. Supp. 427, 447-48 (W.D. Okla. 1963).

[8] E.g., Dowell v. Board of Education of Oklahoma City, 338 F. Supp. 1256, 1273 (W.D. Okla. 1972), aff'd, 465 F. 2d 1012, 1014-15 (10th Cir.), cert. den., 409 U.S. 1041 (1972).

own expert or master,[9] and "fine tuning" or supplementation of remedies once attempted[10] (after all, Mississippi promoted racial discrimination for many years).

C. Application Of Bazemore To This Case Involves Significant Legal Issues

The contention that application of Bazemore to this record involves only factual issues (Opp. at 11) is erroneous. First. The en banc court erred as a matter of law by concluding, that the Mississippi defendants "ha[ve] adopted a wholly neutral admissions system." Bazemore, supra, 478 U.S. at 408. See Petit. at 12-18, 44-48. Second. In contrast to Bazemore where there was "no evidence of any discrimination...in...services" (478 U.S. at 407), the en banc court found that disparities persisted. Ayers III, A.85. Then, however, that court did not apply the portion of Bazemore discussing services to its finding, although it was relevant to both separation and unequal opportunity. Finally, there is a need to delimit the parameters of the concept of "wholly voluntary and unfettered choice of private individuals" (Bazemore, supra, 478 U.S. at 407) -- a task which was unnecessary in Bazemore and involves a legal judgment. In the time period before Green limited use of free choice plans

[9] E.g., Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 7-11, 32 (1971).

[10] E.g., Board of Education of Oklahoma City v. Dowell, ___ U.S. ___, 111 S.Ct. 630, 633 (Jan. 15, 1991) (describing revisions to plan); Morgan v. Nucci, 831 F.2d 313, 331 (1st Cir. 1987).

at the elementary and secondary levels, the Court of Appeals for the Fifth Circuit recognized that segregation will be the product not only of a rigid policy of separation, but also of other factors such as staff segregation and program disparities which promote racially-based choices, and thereby also "fetter" choice. Similarly, one must conclude in view of objective data in the record about staffing patterns and the en banc court's own finding about disparities that the defendants have not fulfilled the obligation articulated in Bazemore. Private petitioners rely on their petition for further elaboration of this point. See Petit. at 19, n.25; 20-21, n.28; 37. Bazemore did not hold that superimposing choice on a "loaded game board" is permissible.[11]

D. The En Banc Court Did Not Confront Plaintiffs' Regulatory Claim Concerning The Board's Overall Obligation

The respondents, like the en banc court, do not fairly confront plaintiffs' regulatory claim concerning the Board's overall obligation based upon 34 C.F.R. §100.3(b)(6)(i) and the six pages of U.S. Department of Education standards (A.90-96). Compare Ayers III, A.80-81, n.11; Opposition at 23, n.14; and Petition at 43. Petitioners rely upon their earlier discussion. See Petit. at 42-43.

[11] Private petitioners persist in the view that Bazemore is not the proper starting point for defining the Board's overall obligation. See Petit. at 31-34.

III. The Decisions of the Courts of Appeals for the Fifth and Sixth Circuits Are in Conflict

In Geier v. University of Tennessee, 597 F.2d 1056, 1065 (6th Cir.), cert. denied, 444 U.S. 886 (1979), the court wrote:

> The appellants argue that Green and similar decisions apply only to elementary and secondary education, not to public higher education. Green was concerned with whether a violation which continued after a freedom-of-choice plan was initiated required affirmative action. We conclude that the Green requirement of an affirmative duty applies to public higher education as well as to education at the elementary and secondary school levels. We agree with the court in Norris v. State Council, supra, that 'the state's duty is as exacting' to eliminate the vestiges of state-imposed segregation in higher education as in elementary and secondary school systems; it is only the means of eliminating segregation which differ. 327 F. Supp. at 1373.[12]

When it turned to the facts at hand, the court focused not only on affirmative state conduct impeding the dismantling of the discriminatory system (Opp. at 12), but also, repeatedly, "inaction" as well, Geier, supra, 597 F.2d at 1067. Thus it noted the "failure by state officials to take meaningful actions to facilitate [TSU's] desegregation while acting with respect to UT-N in ways which impeded the required dismantling of the dual system." Id.[13] It is apparent that there is one law for Tennessee and one law for neighboring Mississippi.

Moreover, this record reflects affirmative action impeding

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[12] The Sixth Circuit's footnote is omitted. The full citation to Norris is Norris v. State Council of Higher Education for Virginia, 327 F. Supp. 1368 (E.D. Va.), aff'd mem., 404 U.S. 907 (1971).

[13] See also id. ("...actions and inactions..."); ("...actions and failures to act...").

disestablishment of Mississippi's discriminatory system. Petitioners have noted, in part, the pattern as of 1963 and later of minimum ACT score requirements for admission, and exceptions, which, in view of the spread by race of test scores, has been consistent with perpetuation of the racial status quo. See Petit. at 14-17. The same is the case regarding the mission designations of 1981. See page 3, supra.[14]

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[14] In addition, following the district court decision, the Board has begun to reintroduce at the Universities Center in Jackson, Mississippi the type of competition for white students between a white institution functioning at the Center and Jackson State University, which the district court found as of 1962 to be a "segregative [policy]" (A.20,29), and which respondents claim to have "long ago mooted...." Opp. at 12. See Attachment A.3-4 (Hinds Community College, a Historically White Institution, "...shall, to the extent that space is now or shall become available in existing facilities or in facilities which might be constructed in the future, be the primary provider of lower-division course work at the University Center with the exception that it is understood that an engineering program will be developed at the University Center jointly by Jackson State University and the University of Mississippi"). See also A.10-11 (a committee with a majority of members not affiliated with Jackson State University, rather than Jackson State University, controls other institutions' offerings at the Center). Thus, there is a direct parallel to the situation addressed in Geier. See 597 F.2d at 1067.

Moreover, respondents' argument that the matter is "moot" is in error. First, the Board's belated changes did not end the right of white institutions to offer courses at the Universities Center. See Attachment A.8. There is a need to delimit the relationship of all institutions at the Center, which renders a conclusion of mootness inappropriate. See generally Powell v. McCormack, 395 U.S. 486, 495-501 (1969). Second, since the respondents rely on conduct after the 1975 filing of this case (A.20), their claim that the issue became "moot" is in error. The post-decision actions summarized above are, of course, even more than the showing of "some cognizable danger of recurrent violation...," which justifies injunctive relief. See United States v. W.T. Grant Co., 345 U.S. 629, 632-633 (1953). Third, the ability, annually, to change class schedules at the Center warrants characterizing the issue as one "capable of repetition, yet evading review." See Sosna v. Iowa, 419 U.S. 393, 399-402 (1975).

Respectfully submitted,

Alvin O. Chambliss, Jr.*
North Mississippi Rural
Legal Services
P.O. Box 928
Oxford, MS 38655
(601)234-2918

Lawrence Young
North Mississippi Rural
Legal Services
P.O. Box 767
Oxford, MS 38655
(601)234-8731

Robert Pressman
Center for Law and Education
955 Massachusetts Avenue
Cambridge, MA 02139
(617)876-6611

*Counsel of Record

Attachment

Decided

Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969)

Board of Education of Oklahoma City v. Dowell, 111 S.Ct. 630 (Jan. 15, 1991)

Brown v. Board of Education, 347 U.S. 483 (1954)

Brown v. Board of Education, 349 U.S. 294 (1955)

Columbus Board of Education v. Penick, 443 U.S. 449 (1979)

Cooper v. Aaron, 358 U.S. 1 (1958)

Davis v. Board of Education of School Commissioners of Mobile County, 402 U.S. 33 (1971)

Dayton Board of Education v. Brinkman, 433 U.S. 526 (1977)

Dayton Board of Education v. Brinkman, 433 U.S. 526 (1979)

Goss v. Board of Education, 373 U.S. 683 (1963)

Green v. County School Board, 391 U.S. 430 (1968)

Griffin v. School Board, 377 U.S. 218 (1964)

Keyes v. School District No. 1, 413 U.S. 189 (1973)

McDaniel v. Barresi, 402 U.S. 39 (1971)

Milliken v. Bradley, 418 U.S. 717 (1974)

Milliken v. Bradley, 433 U.S. 267 (1977)

Missouri v. Jenkins, 110 S.Ct. 1651 (1990)

Monroe v. Board of School Commissioners, 391 U.S. 450 (1968)

Pasadena City board of Education v. Spangler,
427 U.S. 424 (1976)

Raney v. Board of Education, 391 U.S. 443 (1968)

Swann v. Charlotte-Mecklenburg Board of Education,
402 U.S. 1 (1971)

United States v. Montgomery County Board of Education,
395 U.S. 225 (1969)

United States v. Scotland Neck Board of Education,
407 U.S. 484 (1972)

Wright v. Council of City of Emporia, 407 U.S. 451 (1972)

Pending

Freeman v. Pitts, 59 U.S.L.W. 3561 (Feb. 19, 1991)
(review granted)

MISSISSIPPI

INSTITUTIONS OF HIGHER LEARNING

Office of Commissioner

February 5, 1990

Dr. James A. Hefner, President
Jackson State University
1400 J. R. Lynch Street
Jackson, Mississippi 39217

Dr. Clyde Muse, President
Hinds Community College
P. O. Box 458
Raymond, Mississippi 39154

Dear Dr. Hefner and Dr. Muse:

I was pleased with the direction of our conversation and the conclusions which we reached at lunch last week. Clearly all of us are keenly aware of the opportunity available to us at the University Center to substantially broaden the higher education services that we can provide to our constituencies in Jackson. Your willingness to reach an agreement regarding an appropriate sharing of our resources demonstrates the kind of leadership that will be critical to accomplishing our goals for the University Center and for higher education in metropolitan Jackson. Your cooperation is also in keeping with a tradition in the state where community colleges and universities have shared facilities and resources for the benefit of all our students. In the past, similar cooperative arrangement have included most of our institutions and many of the community and junior colleges.

We understand that it is an essential component of Jackson State University's role in the metropolitan area to fully develop a well-defined, upper-division, graduate and professional curriculum at the University Center, and that this mission is and shall be considered to be preeminent in utilizing the space that is available there during both daytime and evening hours.

We further understand that Hinds Community College has an important role in the education of students in lower-division courses as well as vocational, technical and associate degree programs throughout metropolitan Jackson, and that in that role it is to the advantage of the Institutions of Higher Learning, Jackson State University, and metropolitan Jackson that Hinds Community College be a full partner in higher education in this community. Furthermore, we agree that in keeping with this role

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Hinds Community College shall, to the extent that space is now or shall become available in existing facilities or in facilities which might be constructed in the future, be the primary provider of lower-division course work at the University Center with the exception that it is understood that an engineering program will be developed at the University Center jointly by Jackson State University and the University of Mississippi.

It is further understood that there may be from time to time in extraordinary circumstances, situations in which it is appropriate for the President of Jackson State University to approve lower-division course work to be offered at the University Center. Such courses shall be offered after consultation with the President of Hinds Community College and giving appropriate recognition of existing offerings by Hinds Community College which might serve the same or similar purposes. Such offerings should take place after all other possibilities, including on-campus course offerings at Jackson State and lower-divisions courses offered by Hinds Community College, are exhausted. It is important that this flexibility be preserved for Jackson State University, but it is not envisioned that it should provide an avenue for the development of a lower-division off-campus site for Jackson State University at the University Center.

In order to facilitate our understanding, we also understand that Hinds Community College will be allocated space in the spring of each year for the following academic year and that such allocation shall be made so as to enhance the presence of Hinds Community College at the University Center subject to the conditions outlined above. It is my opinion that within this understanding we can join together to make the University Center an outstanding example of the way in which universities and community colleges can join together to provide quality higher education for all of the citizens of Jackson.

Thank you again for your understanding and cooperation, as well as your insight and vision for the future.

Sincerely,

W. Ray Cleere
Commissioner

WRC:bc

UNIVERSITIES CENTER
Mississippi's Urban Education Center

3825 Ridgewood Road • Box 23
Jackson, Mississippi 39211 • (601) 982-6611

TITLE: Authorization of Academic Credit Courses/Programs Offered at the Universities Center

AUTHOR: Dr. James W. Strobel, Director
Universities Center

PURPOSE: To Outline Procedures for Approving Credit Courses Offered at the UC by Participating Institutions

EFFECTIVE: 1989 Spring Semester

REVIEWER(S): Universities Center Director, Office of Academic Affairs, and Academic Deans

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These procedures reflect the overall guidelines relating to the approval/disapproval process for credit courses and/or programs offered by participating institutions at the Universities Center. They include:

1. The time period in which course offerings should be submitted by institutions to the Universities Center Director for review prior to the official scheduling of classes.

2. Members of the Jackson State University Review Committee and their Standard Meeting Dates.

3. The initial review procedures and the approval/disapproval process by the JSU/UC Program Review Committee.

4. Contact persons at the participating institutions.

JACKSON STATE UNIVERSITY
(Host Institution)

5. The Participating institutions' option to request a hearing by a higher-level panel in case of dissatisfaction over a disapproval decision made by the JSU/UC Program Review Committee.

6. Final Action regarding approval or disapproval of courses.

TIME PERIOD FOR COURSE SUBMISSION

In order to make sure that courses will be properly cleared in time to be included in the Universities Center class schedule as well as those schedules of participating institutions, academic course offerings should be submitted to the UC Director no later than two (2) months before a particular semester term. The information would be submitted on a UC-Course Request Form, designed by the Office of the Director of the Universities Center.

Because JSU will also schedule short-term academic credit/non-credit courses throughout an individual semester, participating institutions should also submit to the UC Director non-credit offerings and/or seminars at least one (1) month before the event takes place. Although non-credit courses are not currently subject to review by the JSU Review Committee, it is important that the Director of the Office of the Universities Center be informed of proposed non-credit offerings for scheduling purposes. This would allow Jackson State University to more effectively and efficiently disseminate information on available office space and assign room numbers to each event.

After receipt of the proposed academic course offerings from the participating institutions, the Director of the Universities Center would (1) submit a Letter of Acknowledgment within one week and (2) schedule a meeting with the JSU Review Committee to begin the initial review process for academic credit courses.

STANDARD MEETINGS OF THE JSU REVIEW COMMITTEE

To expedite the approval process in time for the printing of class schedules at all participating institutions, the JSU Review Committee will maintain the following review schedule for courses submitted two months before semester begins:

-Fall Semester - 3rd Monday in April
3rd Monday in May
2nd & 3rd Monday in June

-Spring Semester -3rd Monday in October
2nd & 3rd Monday in November

-Summer Semester- 3rd Monday in March
3rd Monday in April

The Universities Center Director shall contact the committee members to cancel meetings on occasions when no academic courses have been submitted for approval by participating institutions.

MEMBERS OF THE JSU REVIEW

The proposed JSU Review Committee would consist of the following representatives:

NAME	TITLE/OFFICE
Dr. Jim Strobel	Director of Universities Center
Ms. Ruth Campbell	Associate Director of Universities Center
Ms. Ruby Hendricks	Director, Center for Lifelong Learning
Dr. Walter Crockett	JSU, Registrar
Ms. Mildred Kelly	UC Registrar
Dr. Dora Washington	Assistant Vice President Academic Affairs
Dr. Leslie McLemore	Dean, Graduate School
Dr. David Quinones	Dean, School of Business
Dr. Johnnie Mills*	Dean, School of Education
Dr. Mary Benjamin*	Dean, School of Liberal Arts
Dr. Robert Heck*	Dean, School of Science and Technology

*Or appropriate chair representative.

CONTACT PERSONS AT THE PARTICIPATING INSTITUTIONS

The contact persons for the participating institutions are as follows:

INSTITUTION/NAME	TITLE/PHONE NO.
HINDS COMMUNITY COLLEGE	(982-6321)
Dr. Wayne Stenecypher	Academic Dean
Dr. Glenda Lester	Academic Counselor
MISSISSIPPI STATE UNIVERSITY	(982-6767)
Ms. Nancy Leach	Branch Program Assistant
Mr. Pete Walley	Engineering/Graduate Program
Mr. Robert Craycroft	School of Architecture
UNIVERSITY OF MISSISSIPPI	(982-6682)
Dr. Charlie Clark	Continuing Education Director
Dr. Krista Johns	Associate Director
Dr. Ellie Fortner	Paralegal Program/Staff Attorney
Mr. Pete Walley	Engineering Graduate Program
UNIVERSITY OF SOUTHERN MS	(982-6210)
Ms. Susie Hughes	Assistant Director
Ms. Mary Ann Purser	Coordinator

REVIEW PROCEDURES AND APPROVAL/DISAPPROVAL PROCESS

The JSU Review Committee shall:

1. Meet no more than twice a month to review course requests from participating institutions.

2. Make a determination of approval or disapproval, and the UC Director will correspond with the institution orginating the request within one week after the standard meeting of the committee. The determination would be based on the following circumstances.

   - whether the proposed courses by submitting existing course offerings and/or programs offered at the UC through Jackson State University--based on the "50-mile radius" Policy.

   - whether Hinds Community College's proposed course offerings consist of courses from a two-year program (Freshman and Sophomore) and whether these courses are offered during the day versus in the evenings, or are duplications of JSU offerings. (These guidelinges will not deviate from those outlined in the letter dated December, 14, 1984 (Paragraph 4) to Dr. Clyde Muse from the Executive Director of the Board of Trustees of State Institutions of Higher Learning. See letter attached).

The correspondence from the Director of the Universities Center shall be a "formal written response" to the directors of the participating institutions' program at the Universities Center (copied to the Dean or Director of the program on the institutions' main campus). An Approval/Disapproval Form would be submitted stating course number/name as well as necessary comments in a cover letter.

Should all courses meet approval by the Universities Center Review Committee, the following action would take place.

1. An approval response shall be sent to the participating institution as discussed above.

2. Course(s) will be listed in the upcoming Universities Center Class Schedule.

However, if the course is disapproved, the review process would move to a higher level of consideration.

REQUEST FOR HEARING

Should a participating institution wish to challenge a "Disapproval Ruling" made by the JSU Review Committee, the institution has the option to request a hearing through a Universities Center "Executive Review Committee" which would consist of the following:

1. Vice President for Academic Affairs of Jackson State University.

2. Appropriate Vice President from participating institution requesting hearing.

3. Director or Associate Director of Universities Center.

4. UC Program Director of the participating institution making the course request and/or the Dean or Director of the program on the participating institution main campus.

5. The Executive Review Committee may invite appropriate representations from affected institutions to make presentations at the hearing. Written presentations may also be requested.

The "Request for Hearing" should be made by the participating institution to the Director of the Universities Center within one week (7 days) after receipt of a "ruling" from the Initial JSU Review Committee.

Upon receipt of the request for Hearing, the Universities Center Director's Office would immediately schedule (within 3 days) a meeting of the Executive Review Committee. This committee would meet within 10 days upon receipt of request.

After this meeting, a "Final Ruling" would be made by the Executive Committee and one of the following would occur:

1. Ruling of "Disapproval" would be sent to the participating institution making the initial request, signed by the UC Director. At that point, the matter would be dropped.

2. A ruling of "Approval" would be submitted in the same manner stated in Step 1, and the course would be included in the Universities Center Class Schedule for that School Term.

APPROVED:

President, Jackson State University

Director, Universities Center

Certificate of Service

I certify that copies of the foregoing Reply Brief were mailed to the Counsel listed below, this day of March, 1991:

William F. Goodman, Jr.
Paul Stephenson, III
William F. Ray
Watkins & Eager
P.O. Box 650
Jackson, MS 39205

Mike Moore
Attorney General
State of Mississippi
P.O. Box 220
Jackson, MS 39205

Kenneth W. Starr
Office of the Solicitor General
Department of Justice
Washington, D.C. 20530

Linda F. Thome
U.S. Department of Justice
P.O. Box 66078
Washington, D.C. 20035-6078

Robert Pressman
Center for Law and Education
955 Massachusetts Avenue
Cambridge, MA 02139
(618)876-6611

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In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR. ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX – VOLUME I

MIKE MOORE
Attorney General
State of Mississippi
450 High Street, 5th Floor
Jackson, Mississippi 39201
WILLIAM F. GOODMAN, JR.
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Watkins & Eager
400 East Capitol Street
Jackson, Mississippi 39201
Counsel for Ray Mabus, et al.

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel for the United States
ALVIN O. CHAMBLISS, JR.
North Mississippi Legal Services
1006 Jackson Avenue
Oxford, Mississippi 38655
ROBERT PRESSMAN
Center for Law and Education
955 Massachusetts Avenue, Suite 13A
Cambridge, Massachusetts 02139
Counsel for Jake Ayers, Jr. et al.

PETITIONS FOR WRITS OF CERTIORARI FILED JANUARY 28, 1991 (No. 90-1205) AND DECEMBER 17, 1990 (No. 90-6588)
CERTIORARI GRANTED APRIL 15, 1991

In the Supreme Court of the United States

OCTOBER TERM, 1991

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JAKE AYERS, JR., ET AL., PETITIONER

v.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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DOCKET ENTRIES – DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

No. GC 75-9-NB (SENIOR COLLEGES)

JAKE AYERS, SR, ET AL., PLAINTIFFS
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE FILED	DOCUMENT
1/28/75	Complaint of Jake Ayers, Sr., et al.
	* * * * *
4/7/75	Amended Complaint of Jake Ayers, Sr., et al.
	* * * * *
4/14/75	United States' Complaint in Intervention.
	* * * * *
6/3/75	Answer of the Board of Trustees of State Institutions of Higher Learning, and Named Universities to Complaint in Intervention.
6/3/75	Answer of the Board of Trustees of State Institutions of Higher Learning, and Named Universities to Amended Complaint of Ayers, et al.
	* * * * *

DATE FILED	DOCUMENT
9/25/75	Answer of Governor William L. Waller to the Complaint in Intervention.
9/25/75	Answer of Governor William L. Waller to the Amended Complaint of Ayers, et al.
	* * * * *
5/31/79	Second Amended Complaint of Jake Ayers, Sr., et al.
	* * * * *
6/15/79	Answer of the Board of Trustees of State Institutions of Higher Learning, and Named Universities to Second Amended Complaint of Ayers, et al.
	* * * * *
4/27/87	Non-jury trial held 4/27/87-6/1/87.
	* * * * *
12/11/87	Memorandum Opinion.
12/11/87	Judgment.
1/4/88	Notice of Appeal by Plaintiffs Jake Ayers, Sr., et al.
1/5/88	Notice of Appeal by United States.
	* * * * *
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DOCKET ENTRIES – COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH DISTRICT

No. 88-4103

JAKE AYERS, SR, ET AL., PLAINTIFF-APPELLANTS
UNITED STATES OF AMERICA,
PLAINTIFF-INTERVENOR-APPELLANT

v.

WILLIAM ALLAIN, ET AL., DEFENDANTS-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

RELEVANT DOCKET ENTRIES

DATE FILED	DOCUMENT
2/6/90	Opinion rendered by panel – reversed and remanded.
2/21/90	Petition for rehearing and suggestion for rehearing *en banc* filed by appellee.
4/9/90	Order granting rehearing *en banc*.
9/28/90	Opinion rendered by *en banc* court – affirmed.

AYERS COMPLAINT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

No. GC-75-9K

JAKE AYERS, SR, ET AL., PLAINTIFFS

v.

WILLIAM L. WALLER, GOVERNOR,
STATE OF MISSISSIPPI, ET AL., DEFENDANTS

---

* * * * *

FACTS

39. The defendants have long maintained, and continue to maintain and pursue, general policies, practices, conditions, customs and usages of racial discrimination in employment and educational practices and opportunities in the State's system of higher education. Until 1962, all public institutions of higher learning in Mississippi were rigidly segregated.

40. The Board of Trustees is comprised of 12 white members and 1 black member. The only black member in the entire history of the Board was appointed in 1972.

41. The Board of Trustees maintains a professional staff of twenty persons, all of whom are white.

42. By authority of § 37-101-3 Miss. Code, 1972 Annotated, the University of Mississippi enjoys the unique distinction of having a special trustee to set on the Board of Trustees, known as the Le Bauve Trustee, who votes on matters only pertaining to the University of Mississippi. No other university has such special trustee accorded to it.

43. The following chart reveals the student credit-hour support made to the eight (8) universities for the 1972–73 academic year. It shows that the three traditionally black universities received a combined average of $5.40 less per student credit hour than the five traditionally white universities.

Institutions	*Total Student Credit Hours*	*Total $ of Support* **	*Average Per SCH*
Alcorn State University	76,464	$1,998,207	$26.1
Delta State University	75,792	2,825,736	37.3
Jackson State University	133,464	4,568,550	34.2
Mississippi University for Women	65,282	2,782,329	42.6
Mississippi State University	268,026	9,288,612	34.7
Mississippi Valley State University	67,192	1,976,493	29.4
University of Mississippi	214,160	8,903,706	41.6
University of Southern Mississippi	253,031	7,878,558	31.1
Traditionally Black Institutions	277,120	8,543,250	30.8
Traditionally White Institutions	876,291	31,678,941	36.2
All Institutions	1,153,411	40,222,191	34.9

44. By reason of the acts and conditions alleged in paragraph 43 above, the historically black institutions are maintained as relatively limited educational institutions and are, thus, less attractive to prospective students than the traditionally white schools.

45. The Board of Trustees operates a higher education institution in Jackson, Mississippi which serves as a branch facility for three of the traditionally white universities (the

University of Mississippi, Mississippi State University and the University of Southern Mississippi). The Universities Center has a predominantly white enrollment and offers a wide range of courses notwithstanding the existence in Jackson of Jackson State University, a traditionally black institution of higher learning. Although the course offerings made available through the Center are described as unique to Jackson State's regular curricular, many of them are in fact duplicative of Jackson State's courses. This points up the real reason why the Universities Center was established and is still maintained in Jackson: to make it possible for white residents of the Jackson area, who are unable to attend one of the historically white institutions at its campus, to attend a state-supported institution of higher learning without having to go to Jackson State. The purpose and effect of the maintenance of the Universities Center in close proximity to Jackson State is to drain funds, students, resources, programs and facilities away from Jackson State and, thereby, to undermine its academic viability as an educational institution of quality capable of attracting students of all races. The existence of the Center in Jackson out from under the control of Jackson State results in the perpetuation of unequal educational opportunity for black people.

46. The University of Southern Mississippi maintains a branch facility in Natchez, Mississippi, characterized as the Natchez Center—USM. The Natchez Center offers a full range of degree programs to residents of the Natchez area, notwithstanding the existence of Alcorn State University in Lorman, Mississippi, only 32 miles away. The purpose and effect of the Natchez Center—USM in Natchez—in close proximity to Alcorn State is to drain funds, students, resources, programs and facilities away from Alcorn and, thereby, to undermine its academic viability as an educational institution of quality capable

of attracting students of all races. The existence of this institution in Natchez out from under the control of Alcorn State results in the perpetuation of unequal educational opportunity for black people. The Natchez Center was established in Natchez by the University of Southern Mississippi in order to make it possible for white residents of the Natchez area who are unable to attend USM's main campus to attend a state-supported institution of higher learning in their own area without having to go to Alcorn State.

47. Mississippi State University operates a branch facility in Vicksburg, Mississippi. This facility offers college level courses to Vicksburg area residents notwithstanding the existence of Vicksburg State University less than 40 miles away in Lorman, Mississippi. The purpose and effect of maintaining the Vicksburg Center in close proximity to Alcorn State is to drain funds, students, resources, programs, and facilities away from Alcorn and, thereby, to undermine its academic viability as a quality educational institution capable of attracting students of all races. The existence of this facility in Vicksburg operating in competition with Alcorn results in the perpetuation of unequal educational opportunity for black people. The Vicksburg Center was established in Vicksburg by Mississippi State University in order to make it possible for white residents of the Vicksburg area who are unable to attend MSU's main campus to attend a state-supported institution of higher learning in their area without having to go to Alcorn State.

48. The transfer of the facilities referred to in paragraphs 45 and 47 above would be a most viable way of achieving a more balanced racial mixture of black and white students at Jackson State and Alcorn State. The existence of these facilities out from under the control of Jackson State and Alcorn State is neither logical nor geographical, but merely racial. It is an irrefutable testimonial to white racism.

49. For fiscal 1970, Mississippi's two land grant universities were allocated $4,464,035 in federal funds alone under the Morrill Act. When the funds were divided, Mississippi State received $4,336,516 while Alcorn State received only $127,000 a meager 2.8 percent. Although land grant funds are available under the Smith-Lever Act, and the McIntire-Stennis Act, as well as under the Morrill Act, Alcorn only receives funds under the Morrill Act and even then it received only a few thousand dollars annually prior to 1967. On the other hand, Mississippi State has received substantial amounts of monies under the Smith-Lever, McIntire-Stennis and Morrill Acts which, combined with state and local monies, have resulted in significant funding disparities and consequently program and service disparities between the two institutions.

50. Although both Alcorn State and Mississippi State are land grant institutions under the Morrill Act, only Mississippi State has been treated as having true land grant status. The Agricultural and Forestry Experimental Stations and the Agricultural Extension Service have been located by virtue of legislative authorization exclusively under the administrative jurisdiction of Mississippi State with branch facilities being located at Alcorn State.

51. Mississippi State University is designated by law the land grant institution in Mississippi to officially administer and receive and dispense land grant funds for the operation of all land grant functions in the State of Mississippi, including the following research, service and institutional programs: agricultural and forestry experimental stations (§ 37-113-17 Miss. Code, 1972 Ann.); community and agricultural extension services (§ 37-113-19 Miss. Code, 1972 Ann.); soil and conservation and experiment stations (§§ 37-113-23 and 67-27-101 Miss. Code, 1972 Ann.); and other research, service and instructional programs. By virtue of §§ 37-121-3, 37-121-5, et seq. Miss.

Code, 1972 Ann., all land grant research, service and instructional programs located at Alcorn State University are financed through Mississippi State and are maintained as branch programs and facilities of that institution. In light of the legal status of Mississippi State University compared to that of Alcorn State University, it is apparent that only Mississippi State is regarded by the Board of Trustees and the State of Mississippi as having true land grant status.

52. Alcorn State University was established in 1871 as the land grant institution in Mississippi. It was recognized by the State legislature as the agricultural college for the education of Negro youths. Mississippi State University was organized in 1878 as an agricultural college for the education of white youths. However, since the very beginning, the defendants and their predecessors have discriminated against Alcorn State in allocating land grant funds and other finances to the two institutions. In fact, virtually all land grant funds have gone to Mississippi State which has allowed only a very small percentage to go to Alcorn State. For example, for fiscal 1970, the two land grant institutions were allocated $4,464,035 in federal funds under the Morrill Act. Of those funds, Mississippi State received $4,336,516 while Alcorn State received $127,000, a meager 2.8 percent. In the 1972-73 academic year, Mississippi State received $29,358,908 in total revenues compared to $6,984,723 received by Alcorn State (23.8 percent). After nearly a century of such disproportionate funding, the two land grant institutions today are virtually beyond comparison. In the 1973-74 academic year, Mississippi State had a total student enrollment of 9,784 compared to a total student enrollment at Alcorn State of 2,538 (25.9 percent). For the same academic year, Mississippi State had a total faculty of 509 compared to a total of 126 faculty employees at Alcorn State (24.8 percent). The comparative

statistics presented in the table below reveal that similar disparities exist between the two universities in regard to degrees granted, student credit hours produced, appropriations for new construction and library appropriations for 1972-73 and average salaries for full professors for 1974-75.

SELECTED COMPARATIVE STATISTICS
1972-73

	Alcorn University	*Mississippi State University*
Total Degrees Granted	436	2,439
Degrees in Agric. and Natural Science	42	184
Total Student Credit Hours	304,526	1,056,530
Library Appropriations	1,998,207	9,288,612
New Construction	3,594,206	28,141,557
*Average Salary (Full Professor)	17,584	20,861

53. During the entire history of the existence of Coahoma Junior College and Utica Junior College, the defendants have pursued policies and practices in regard to the allocation of finances, facilities, programs and resources which discriminate against these colleges as traditionally black educational institutions. These discriminatory policies and practices continue until this day,

---

* These figures are presented in the State's May 28, 1974 modifications to its Feb. 8, 1974 Plan of Compliance to H.E.W. They are the Board's projection of the average salaries for full professors at the two institutions, inclusive of a 12.63% increase in average salary at Alcorn over the 1973-74 academic year compared to a 5.91% increase in average salary at MSU over 1973-74.

resulting in programs, facilities and resources at Coahoma and Utica which are relatively limited in comparison to those of the traditionally white junior colleges—particularly Hinds, Copiah-Lincoln, Mississippi Delta and Northwest which are located in relatively close proximity to them. Coahoma and Utica are the only public junior colleges in the State which do not have their own support districts to which they can look for local funds. This arrangement has resulted in these institutions receiving unequal local financing for purposes of general support and construction. In addition, the financing formula utilized in allocating State funds between and among the various junior colleges discriminates against Utica and Coahoma, resulting in unequal educational programs, facilities and resources for these institutions.

* * * * *

ORDER, PRETRIAL CONFERENCE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

NO. GC 75-9-K

JAKE AYERS, SR. ET AL., PLAINTIFFS
AND
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM L. WALLER, GOVERNOR, ET AL, DEFENDANTS

ORDER

3. Since the issues involving the Board of Trustees of the State Institutions of Higher Learning (Board of Trustees) are clearly separable from those affecting the State's 16 junior colleges, the court finds it would promote the convenience of the parties, be conducive to expedition and economy, and be without prejudice to the private plaintiffs and plaintiff-intervenor, to grant a separate trial on all issues affecting said Board of Trustees and the named universities. The court, therefore, orders that separate trials be had under Rule 42(b), F. R. Civ. P., on all claims made by the private plaintiffs and plaintiff-intervenor against the Board of Trustees, and until otherwise ordered all proceedings affecting the Board of Trustees and the State's eight universities shall be treated as separate and distinct from the balance of the case.

4. With respect to the case alleged against the Board of Trustees, the court makes the following orders:

(a) Finding that Rule 23 prerequisites are satisfied by private plaintiffs to maintain a class action under Rule 23(b)(2), the court certifies that the action brought by private plaintiffs against the Board of Trustees shall be on behalf of a plaintiff class defined as all black citizens residing in Mississippi, whether students, former students, parents, employees, or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by said Board of Trustees.

* * * * *

This, 17th day of September, 1975.

/s/ WILLIAM C. KEADY
William C. Keady,
Chief Judge
UNITED STATES DISTRICT COURT

MOTION FOR TEMPORARY RESTRAINING ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

CAUSE NO. GC 75-9-K

JAKE AYERS, SR. ET AL., PLAINTIFF
AND
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

versus

WILLIAM L. WALLER, GOVERNOR, ET AL, DEFENDANT.

MOTION FOR A TEMPORARY RESTRAINING ORDER OR IN THE ALTERNATIVE A PRELIMINARY INJUNCTION

Plaintiff, Jake Ayers, Sr., et al., by and through their undersigned attorneys, move the Court, pursuant to Rule 65 of the Federal Rules of Civil Procedures, for a temporary restraining order or in the alternative a preliminary injunction enjoining the defendant, Board of Trustees of the State Institutions of Higher Learning, their agents, servants, employees, attorneys, and all persons in active concert and participation with them, pending the final hearing of this action, from instituting and enforcing the "Agreement Governing the Recruiting of Prospective Athletes in the State of Mississippi" adopted by the defendant on or about October 16, 1975, and in support thereof state and would show:

* * * * *

4.

Defendant's actions in adopting the aforementioned "Agreement Governing the Recruiting of Prospective Athletes in the State of Mississippi, attached thereto as Exhibit "A," hereinafter referred to as "Agreement" simply perpetuates and reinforces the years of racial discimination heaped upon plaintiffs and the class they represent in the administration and operation of public higher education in the State of Mississippi.

5.

The "Agreement" is unconstitutional on its face, is blatantly discriminatory against the traditionally black institutions, and denies plaintiffs and their class rights as guaranteed and secured by 42 U.S.C. Section 1981 and 1983 and the Fifth, Ninth, Thirteenth and Fourteenth Amendments to the Constitution of the United States.

6.

On September 10, 1975, in anticipation of the adoption of the "Agreement" by defendants, the historically black institution of higher learning via their presidents voiced opposition thereto in the "Resolution Regarding Proposed Change In the Board of Trustees of Institutions of Higher Learning Regulations for Recruiting of Athletes," hereinafter referred to as "Resolution" which is attached hereto as Exhibit "B" and made a part hereof as if copied herein fully and completely.

7.

As vividly indicated by the "Resolution," the "Agreement" which is contrary to a long standing policy of the defendant Board requiring all state institutions of higher

learning to honor the prior signing of athletes, the "Agreement" now allows:

a. The traditionally white institutions to recruit and sign athletic signees of traditionally black institutions without allowing the latter the same privilege;

b. To force or otherwise entice the student athlete to breach contractual obligations and commitments previously made to the traditionally black institutions; and

c. The traditionally white institution an unconstitutional and unequal edge in recruiting the black athletes, a market upon which the black institutions by pattern, practices, and policies of racial discrimination have been forced to solely depend.

8.

The "Agreement' would further "seriously undermine the efforts" of the traditionally black institutions, "not only to field viable sports teams, but also would sabotage their efforts to move out of isolation into the mainstream of higher education." More specifically, a measure such as adopted by defendants though, athletically directed, seriously damages the educational objectives of the affected institutions.

9.

Plaintiffs are informed and believes that recruiting efforts of State institutions of higher learning will begin either the last week of November or the first two weeks of December of this year, and unless the defendants are enjoined from allowing traditionally white institutions to recruit as allowed by the "Agreement," plaintiffs and the class they represent as well as the traditional black institutions will be irreparably harmed.

* * * * *

EXHIBIT A

ADOPTED BY THE BOARD OF TRUSTEES ON THURSDAY, OCTOBER 16, 1975

AGREEMENT GOVERNING THE RECRUITING OF PROSPECTIVE ATHLETES IN THE STATE OF MISSISSIPPI

WHEREAS, it is the desire of this Board that all institutions operating under its direction compete fairly for athletic talent; and

WHEREAS, it is recognized that the Mississippi institutions of higher learning are members of various athletic conferences and therefore have different dates for the beginning of legal scholarship commitments; and

WHEREAS, it is further recognized that each of the institutions should be protected from outside recruitment by non-Mississippi institutions which observe the same starting date of commitment; now

THEREFORE BE IT RESOLVED, that all institutions under the direction of this Board be instructed to honor each institution's athletic scholarship commitments and/or letters of intent; and

BE IT FURTHER RESOLVED, that the institutions under the direction of this Board shall observe the following recruiting rules:

1. Each institution may sign athletes on the legal date of commitment under which such institution operates; *PROVIDED that such athlete shall continue to be eligible to sign with any Mississippi institution whose legal date comes later than that of the prior institution. Such period of eligibility shall expire seventy-two (72) hours after the last date of any institution's legal date of commitment.*
2. When an institution is recuiting a student-athlete who has previously committed with another

Mississippi institution, the Athletic Director of the recruiting institution should notify the Athletic Director of the School to which the student has committed himself.

3. When a student-athlete who is enrolled at one of the institutions under the direction of this Board wishes to transfer to and participate in the athletic program of another such institution, the transfer and participation must be approved by the Athletic Directors involved.

BE IT FURTHER RESOLVED, that this agreement shall be signed by the Athletic Directors of each of the institutions under the direction of this Board; and

BE IT FURTHER RESOLVED, that this agreement shall become effective upon the date of such signing.

* * * * *

EXHIBITS NOVEMBER, 1975 HEARING, STIP. EXHIBIT 1

EXCERPTS OF MINUTES OF BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

October 29, 1975

"Report of the Committee on Athletics

Mr. Stone moved the adoption of the following report on the Committee on Athletics, seconded by Mr. Riddell:

. . . .

5. That the following policy on athletics be adopted:
   (1) The programs of intercollegiate and intramural athletics of the several institutions shall be organized and developed as elements in the total educational programs of the institutions. Athletic programs shall be conducted so as to promote the total welfare of students, including physical and mental health and the development of capacities and talents, and so as to contribute to the morale of students, alumni and friends of the institutions.
   (2) Programs of intercollegiate athletics shall be under the complete control of the administrators and faculties of the several institutions.
   (3) Funds used to support all athletics programs shall be fully controlled by the administrations of the institutions, however, no funds budgeted for instructional purposes may be diverted to athletics and no athletics funds may be diverted to other purposes without official approval by the Board of Trustees.

(4) Standards of the NCAA and appropriate regional conferences shall be the standards of the several athletics departments."

* * * * *

I, the undersigned, *E. E. Thrash*, Executive Secretary and Director of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, do hereby certify that the above and foregoing is a true and correct copy of the minutes of said Board in meeting on *December 17, 1964*, and the same appears of official record.

Witness my official signature this *27th* day of *October*, 1975

/s/ E. E. THRASH,
E. E. Thrash,
Executive Secretary and Director
BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

STIP. EXHIBIT 2

EXCERPTS OF MINUTES OF BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

July 16, 1970

"Report of the Presidents Council

. . . . .

On motion by Dr. Roberts, seconded by Mr. Stone, the following recommendation and resolution of the Presidents Council was approved by the Board:

WHEREAS, it is the desire of this Board that institutions operting under its direction compete fairly for athletic talent;

NOW, THEREFORE, BE IT RESOLVED, That all institutions be instructed to honor each institution's signees of athletic scholarships or letters of intent, and

BE IT FURTHER RESOLVED, That in the case of a student transferring, the transfer must be approved by the Athletic Directors involved."

* * * * *

I, the undersigned, *E. E. Thrash*, Executive Secretary and Director of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, do hereby certify that the above and foregoing is a true and correct copy of the minutes of said Board in meeting on July 16, 1970, and the same appears of official record.

Witness my official signature this *4th* day of *June*, 1975

/s/ E. E. THRASH,
E. E. Thrash,
Executive Secretary and Director
BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

TURNER DEP. EXHIBIT 4

MINUTES OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

October 16, 1975

BE IT REMEMBERED, That the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi met in regular session in Jackson, Mississippi, on Thursday, October 16, 1975, and pursuant to notice in writing mailed by certified letter with return receipt requested on October 3, 1975, to each and every member of said Board, said date being at least five days prior to this October 16, 1975.

At the above named place there were present the following members to wit: Milton E. Brister, Bobby L. Chain, R. C. Cook, Ross L. Franks, R. W. Harrison, M. Paul Haynes, Verner S. Holmes, W. M. Shoemaker, Miriam Q. Simmons, Boswell Stevens, Mike P. Sturdivant, and Thomas N. Turner. Absent: Travis E. Parker.

The meeting was called to order by President W. M. Shoemaker and opened with prayer by Dr. Thrash.

• • • • •

Report of the Athletics Committee

Mr. Turner moved, seconded by Mr. Stevens, to approve the "Agreement Governing the Recruiting of Prospective Athletes in the State of Mississippi".

Dr. Harrison amended the motion to change the agreement to allow for another 72-hour period in which the athlete could be eligible to sign with another institution. The motion was seconded by Mr. Sturdivant.

A vote was taken on the amended motion and it was declared not carried.

Mr. Brister then made a substitute motion, seconded by Dr. Harrison, to make no changes in the Board's present policy regarding athletic recruitment.

A vote was taken on the substitute motion and it was declared not carried.

A vote was then taken on the original motion and it was declared carried, with Dr. Harrison recording a negative vote.

• • • • •

STIP. EXHIBIT 4

SOUTHEASTERN CONFERENCE MANUAL

* * * * *

3. FRESHMAN AND JUNIOR VARSITY FOOTBALL GAMES

Varsity and junior varsity teams in all sports may be composed of freshmen and/or upperclassmen. Freshmen or junior varsity football teams of the Southeastern Conference shall be allowed to play only five games in any regular season except intramural games. No freshman or junior game shall be played prior to three weeks after classes start or in lieu thereof, before the third weekend in September. All freshman or junior varsity games shall be played on the home campus of one of the competing institutions. These home games shall be officiated by Southeastern Conference officials.

4. PARTICIPATION

A student-athlete, regardless of his classification, may not participate in more than a total of eleven regular season football games. A student-athlete who participates on a team of one classification may not participate on a team on a team of a different classification on the same day.

* * * * *

6. SCHOLARSHIP AWARDS

A. Football grants-in-aid and/or scholarships shall be signed and awarded to eligible (new) athletes between 12:00 o'clock noon, Eastern time, the second Saturday in December and the next December 1. Conference schools shall not permit the signing of any letters of commitment, agreement, consent, etc. by prospective student-athletes prior to noon

on the second Saturday in December. All signed grants-in-aid for football must be in the Commissioner's office or postmarked by December 1 of the year involved. A member institution shall not make public announcement of any verbal commitment prior to the actual signing.

B. Number of Scholarships
The total number of grants-in-aid or scholarships in football awarded to eligible (new) athletes and in force at any one time shall conform to existing NCAA limitations in football and basketball.

* * * * *

10. AWARDS

Conference office will furnish championship trophy to team with the winning percentage. In case of ties, duplicate awards will be made.

11. ELIGIBILITY FORMS **(See "Eligibility" – pages 20-21.)**

12. OFFICIALS **(See "Officiating" – pages 25-26.)**

13. RULES AND REGULATIONS

Governed by NCAA rules and regulations.

GOLF

1. AWARD OF SCHOLARSHIP

A. The date and time of signing a prospective student-athlete in gold shall coincide with that of the National Inter Conference Letter of Intent. A member institution shall not make public announcement of any verbal commitment prior to the actual signing.

B. Maximum Awards—Three initial financial aid awards to no more than six student-athletes. Eight overall financial aid awards to no more than 16 student-athletes.

C. A scholarship may be signed for a maximum of one academic year.

* * * * *

STIP. EXHIBIT 5

SOUTHWESTERN ATHLETIC CONFERENCE, WILEY COLLEGE AND TENNESSEE A & I STATE UNIVERSITY LETTER OF INTENT REGULATIONS AND PROCEDURES

Alcorn A. and M. College
Lorman, Mississippi

Arkansas A. M. & N. College
Pine Bluff, Arkansas

Grambling College
Grambling, Louisiana

Jackson State College
Jackson, Mississippi

Mississippi Valley State College
Itta Bena, Mississippi

Prarie View A. and M. College
Prarie View, Texas

Southern University
Baton Rouge, Louisiana

Tennessee A. and I. State University
Nashville, Tennessee

Texas Southern University
Houston, Texas

Wiley College
Marshall, Texas

1. By the signing of this Letter of Intent, the student-athlete certifies that he has not signed another Letter of Intent with any of the above named institutions.
2. After signing the Letter of Intent with one institution, should a student-athlete elect to enroll at another of the institutions listed above, the institution in which he enrolls may not be represented in athletic competition by that student-athlete until he has been two years in residence, and in no case for more than two years of varsity competition in any other sport. This restriction shall not apply to a student-athlete after one academic year of residence at the institution with which he signed a Letter of Intent.
3. This letter will be rendered null and void if I am notified by the institution listed on the reverse side that I have not met the requirements for admission to that institution or its academic requirements for financial aid to athletes.

4. The Letter of Intent must be signed by the Athletic Director before submission to the prospective student-athlete and his parents for their signatures.
5. This form must be completed in triplicate, one copy to be retained by the prospective student-athlete and two copies returned immediately to the institution. It will be the responsibility of the institution to see that one copy is sent promptly to the Commissioner of the Southwestern Athletic Conference.
6. THIS LETTER OF INTENT IS NOT TO BE SIGNED BY STUDENT-ATHLETE AND PARENT PRIOR TO 8:00 A.M. LOCAL TIME ON:

Football ..... December 1st
Basketball ..... March 1st
Baseball, Tennis, Track and Field, Golf and Swimming ..... (Inter-Conference Letter of Intent Will Be Used)

SOUTHWESTERN ATHLETIC CONFERENCE

Wiley College Tennessee A. & I. State University

LETTER OF INTENT

Instructions

1. Do not sign before 8:00 A.M. (local time) on dates as indicated on the reverse side.
2. Read reverse side before completing and signing this form.
3. To be completed in triplicate – one copy to be retained by the student and the two copies to be returned to the institution.
4. THIS IS NOT AN AWARD OF FINANCIAL AID. If the enrollment decision in this letter is made with the understanding by the student that he is to receive financial assistance, he should have in his possession, before completing this Letter of Intent, a written statement from the institution involved which lists the terms and conditions, including the amount and duration, of such financial assistance.

TO WHOM IT MAY CONCERN:

This is to certify my decision to enroll at .....

..... in the fall of .....
Name of Institution Year

for participation in .....
Sport

In making this certification I understand that:

1. All institutions listed on the reverse side are obligated to respect my decision.
2. I may not hereafter sign a Letter of Intent with any other institution listed on the reverse side and if my parent or guardian fails to sign this letter I am free to enroll in any school of my choice where I am admissible.
3. My athletic eligibility will be limited in accordance with the regulations outlined on the reverse side of this letter.

Signed ....
Student Date Time

Signed ....
Parent or Guardian Date Time

Address ....
Street and Number City State

....
Name of High School City State

Signed ....
Athletic Director Date

.....
Institution

STIP. EXHIBIT 6

RESOLUTION REGARDING PROPOSED CHANGE IN THE BOARD OF TRUSTEES OF INSTITUTIONS OF HIGHER LEARNING REGULATIONS FOR RECRUITMENT OF ATHLETES

WHEREAS, Alcorn State University, Jackson State University, and Mississippi Valley State University are historically black institutions in the State of Mississippi and, as such, have suffered all of the discrimination, deprivation, derogation, and stigmatism resulting from the previous conditions of racial isolation;

AND WHEREAS, Mississippi State University and The University of Mississippi are historically white institutions and, as such, have long enjoyed the advantages of political ascendency and social acceptance, and the concomitant state, federal, and private support in significantly greater degrees than the historically black institutions;

AND WHEREAS, Alcorn State University, Jackson State University, and Mississippi Valley State University are members of the Southwestern Athletic Conference, a historically black association, and Mississippi State University and The University of Mississippi are members of the Southeastern Conference, a historically white association;

AND WHEREAS, the members of the Southwestern Athletic Conference and Southeastern Conference have never regularly scheduled and have no present schedule for intercollegiate competition;

AND WHEREAS, there is proposed a resolution which would permit Mississippi State University and The University of Mississippi to recruit athletic signees of Alcorn State University, Jackson State University, and Mississippi Valley State University after the latter institutions have spent travel funds and time to scout and sign the athletes;

AND WHEREAS, such a resolution would be contrary to a long-standing policy of the Board of Trustees of Institutions of Higher Learning requiring the honoring of athletic signees among state institutions of higher learning;

AND WHEREAS, the proposed resolution puts the prospective athlete in position of violating a contractual obligation which is contrary to high standards of ethics which we advocate as institutions of higher learning;

AND WHEREAS, since Mississippi State University and The University of Mississippi, because of their prestige, influential alumni, superior resources, and more comprehensive academic programs, have a virtual monopoly in the recruitment of premium white athletes in Mississippi and have been successful in recruiting Mississippi black athletes; thus, the effect of this proposed regulation would be to give these institutions an even greater recruitment monopoly by being able to take the black athletes from Alcorn State University, Jackson State University, and Mississippi Valley State University;

AND WHEREAS, Alcorn State University, Jackson State University, and Mississippi Valley State University have only been able to recruit black athletes and have not been successful in recruiting white athletes in Mississippi or anywhere else;

AND WHEREAS, there has been a growing atmosphere of cooperation between the historically black and historically white institutions and this new regulation could cause a retrogression to racial polarization between the two groups of institutions;

AND WHEREAS, Alcorn State University, Jackson State University, and Mississippi Valley State University, struggling to overcome the debilitating conditions brought on by racial isolation and deprivation, have been able to attain a measure of enhancement of their state and national image through their intercollegiate sports program;

AND WHEREAS, the proposed regulation violates the provisions and spirit of the United States Department of Health, Education and Welfare Compliance Plan; to wit: "Beginning with the recruiting efforts in the year 1974-75, instruct the historically black institutions to begin their recruiting efforts sixty (60) days prior to the time that the traditionally white institutions begin their recruiting efforts;"

AND WHEREAS, the State of Louisiana, Alabama, Tennessee, Georgia, Florida, and Mississippi all have historically white Southeastern Conference schools and historically black schools whose athletic signing dates correspond to those of the Mississippi historically white Southeastern schools and historically black Southwestern Athletic Conference schools, respectively;

AND WHEREAS, if the proposed resolution were adopted, the Mississippi historically white Southeastern Conference schools would enjoy an advantage in recruiting black athletes not enjoyed by the other Southeastern Conference schools;

AND WHEREAS, if the proposed resolution were adopted, the Mississippi Southwestern Athletic Conference schools would suffer a disadvantage not suffered by other Southwestern Athletic Conference schools or other historically black schools in Southeastern Conference states;

AND WHEREAS, it is the strong feeling of the president, athletic directors, and head coaches of Alcorn State University, Jackson State University, and Mississippi Valley State University that the adoption of the proposed regulation would seriously undermine the efforts of their respective institutions, not only to field viable sports teams, but also would sabotage their efforts to move out of isolation into the mainstream of higher education;

THEREFORE, BE IT HEREBY RESOLVED that the Board of Trustees of Institutions of Higher Learning is respectively requested by the presidents of Alcorn State University, Jackson State University, and Mississippi Valley State University to reject the proposed regulation, and to reaffirm the existing regulation requiring the mutual honoring of the signing dates and athletic signees by the institutions under the Board of Trustees of Institutions of Higher Learning.

WALTER WASHINGTON	9/10/75
Walter Washington, President Alcorn State University	Date
JOHN A. PEOPLES, JR.	9/10/75
John A. Peoples, Jr., President Jackson State University	Date
ERNEST A. BOYKINS	9/10/75
Ernest A. Boykins, President Mississippi Valley State University	Date

ORDER – MOTION FOR TEMPORARY RESTRAINING ORDER DENIED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

No. GC 75-9-K

JAKE AYERS, SR, ET AL., PLAINTIFFS
AND
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM WALLER, GOVERNOR, ET AL., DEFENDANTS

ORDER

This cause having been submitted upon the application of plaintiffs for a temporary restraining order or in the alternative for preliminary injunction, and after notice all parties appeared in court personally and by their attorneys and announced their readiness for trial. Thereupon, the court heard evidence directed to the issues raised by the motion, and after arguments of counsel concluded that plaintiffs have failed to establish the prerequisite elements for the granting of injunctive relief either as a temporary restraining order or preliminary injunction, and have failed to demonstrate that they will suffer irreparable injury unless such injunctive relief is issued. Accordingly, it is

ORDERED

That the plaintiffs' application for temporary restraining order or in the alternative for preliminary injunction to

restrain the implementation of the athletic recruiting resolution adopted by the Board of Trustees is denied.

This, 14th day of November, 1975

/s/ WILLIAM C. KEADY
Chief Judge
United States District Court

ATTACHMENT – AYERS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

RESTRUCTURING HIGHER EDUCATION

CHOICES AND ANALYSIS FOR MISSISSIPPI

Report to the Mississippi Legislature and Board of Trustees of State Insitutions of Higher Learning

JANUARY 1985

1. RESTRUCTURING HIGHER EDUCATION IN MISSISSIPPI

Traditional Reasons to Alter the Structure of a University System

Historically, the closing of a public college or university is rather rare. There are some instances of consolidation, but generally they have been due to growth rather than contraction in the size of the system. The typical reasons for closure or consolidation are fourfold:

1. Enrollment has declined resulting in unreasonably high instructional costs, loss of a critical mass of students sufficient to sustain a full curriculum, or a weakening of quality due to student and faculty attrition or declining support services.

2. A physical plant (campus) is so inadequate (usually due to age) that it is more cost beneficial to close the college than to maintain it.

3. A fiscal crisis in the higher education system due to appropriations insufficient to support the cost of continued expansion of the system, or in some cases even to maintain it at existing levels. Policymakers may believe that the system has become too costly to sustain, and downsizing it is thought to be the best approach to cost containment.

4. One or more institutions have changed their role or mission to such an extent that they appear to be serving the same constituencies and are an unnecessary duplication of service.

The typical response to any of these conditions has been one or more of the following: (1) alter the governance of the affected institutions to bring about a reversal of the demising conditions; (2) merge weaker institutions with stronger ones; (3) redefine missions to "rationalize" the system more; or (4), when circumstances are really drastic, eliminate one or more institutions.

Why the Interest in Restructuring the University System in Mississippi?

The threshold question for this study was to know why there was so much interest in consolidating or closing any of the State's public universities. We interviewed many people inside and outside of higher education to learn why it was thought necessary to restructure the university system in Mississippi. We found no strong, compelling support among those we interviewed for the closure of any university, although we did find a substantial number of people raising questions about the future viability of two institutions in particular—The Mississippi University for Women and Mississippi Valley State University. Although they questioned the future of MUW and MVSU, they were unsure whether closure or consolidation was feasible or desirable. Of course, many of those we interviewed thought that closure or consolidation was both unnecessary and unwise. In any event, they thought the question deserved an answer.

We found that those who seriously advocate consideration of the consolidation or elimination of one or more institutions believe that such an action would produce significant savings and, therefore, would substantially reduce the cost of the university system overall. Often we heard the statement that the State has more universities than it can equitably support. They feel that the State can

ill-afford to continue to spend more and more money on higher education when there are other equally important educational needs, especially in grades K through 12. They particularly believe it is unnecessary and inefficient to have two state supported universities in close proximity to each other as is the case with MUW and MSU, and Delta State and Valley State, each within a few miles of each other. Presumably, one of the two institutions could be closed, or at least the two could be consolidated into a single university. State appropriations for higher education have steadily risen over the years to a point where at least some people have serious doubts that the State can continue to financially support the system as it now exists. Should the university system be scaled down to a more manageable size? They particularly believe it is unnecessary and inefficient to have two state supported universities in close proximity to each other as is the case with MUW and MSU, and Delta State and Valley State, each within a few miles of each other. Presumably, one of the two institutions could be closed, or least the two could be consolidated into a single university. State appropriations for higher education have steadily risen over the years to a point where at least some people have serious doubts that the State can continue to financially support the system as it now exists. Should the university system be scaled down to a more manageable size?

Second, many of those we interviewed recognize that the Board of Trustees has done much in recent years to reduce unnecessary duplication of programs and to eliminate programs that were not in demand or were of poor quality. They generally applauded the Board for taking these measures, believing they were long overdue. However, they thought much more could be done to encourage the institutions to be more cost conscious. Rightly or wrongly, the perception prevails that the Board really

does not do enough to encourage careful financial management. People point to recent deficit spending at Jackson State and Valley State as examples of this. They also point to significant differences in operational and instructional costs among the various universities, and wonder how such differences can be justified. They also believe the Board should exercise more authority in setting priorities through the budget process. At issue here is a difference in philosophy of the governance role of the Board. These people want more central control over the universities, particularly in the area of cost control and financial management, while the Board has historically followed a policy that gives maximum autonomy to the universities. To some extent, we believe the call for closure or consolidation really is a call for the Board to take whatever action is necessary, however drastic it may be, to keep the cost of higher education within the financial means of the State.

In Mississippi, as with all other Southern States, the system of higher education was developed during an era of racial segregation. The State deliverately created extra institutions in order to maintain a dual system of higher education. In addition, the State created a single sex college for white women within 25 miles of the then all male land grant college. Now, under different circumstances, the geographic distribution of these institutions seems to make little sense. In the abstract, there is no rule of thumb that says how many universities a State should maintain. In fact, the actual number of universities may not be the important issue. The real question is whether the current location and mission of individual institutions makes sense for the future of higher education in Mississippi.

Our primary task was to determine the feasibility of achieving a more cost effective university system through any combination of closure or consolidation of institutions, and to identify the costs and benefits that might be

achieved through such action. We also were asked to examine the current governance structure, and to suggest any changes that might be made that would improve management of the university system.

* * * * *

ALTERNATIVES TO CLOSURE OR CONSOLIDATION OF VALLEY STATE UNIVERSITY

The plight of Valley State University is reflective of the dilemma that surrounds all black institutions of higher education in this nation.

* * * * *

Each institution poses certain dilemmas as the result of its unique history—the purposes of its creation and its evolution. The central dilemma of this time is the future of the historically black institutions. It is of fundamental importance to the current issue of consolidation and closure, because the black institutions bring into focus the problems of implementing Mississippi's primary higher education objectives—achieving both high academic standards and broad accessibility.

As in many states, Mississippi's struggle to develop a State supported system of colleges and universities was not an easy one. While two of the State's higher education institutions were in operation before the Civil War, it was really the land grant movement spurred by Reconstruction which began the development of the system the State has today. Like other institutions, Mississippi's higher education system was sharply separated on racial lines. In its developing stages, the system also endorsed the separation and unequal education of women and men.

* * * * *

Mississippi's eight State supported colleges and universities were established over a period of 116 years—from 1830 to 1946. Five of the eight were originally developed as normal schools or teacher training institutions. Three—Alcorn, University of Mississippi, and Mississippi State—were land grant institutions, although the land grant approach eventually failed at the University of Mississippi. Alcorn is the oldest land grant school for blacks in the nation. Three of the facilities were developed by and for blacks, and one—Mississippi University for Women—was developed as the first state-supported institution of higher learning for women in the nation.

* * * * *

MISSISSIPPI VALLEY STATE UNIVERSITY: The last State supported institution of higher learning to be created by the Legislature of Mississippi was the Mississippi Vocational College. Established in 1946, its mission was to train teachers for rural and elementary schools and to provide vocational training for black students. The legislation specifically stated that Valley was "to establish and conduct schools, classes or courses, for preparing, equipping and training citizens of the State of Mississippi for employment in gainful occupations, in trade, industrial and distributive pursuits whether such students are qualified by educational requirements or not." (Emphasis added.) The college opened its doors four years later. Several years after its opening, about the time of Brown v. Board of Education, the college was greatly expanded. The expansion was predicated on the State's desire to prove that separate education for blacks could be equal education. In 1964, the name of the college was changed to Mississippi Valley State College and in 1974 it became Mississippi Valley State University. The school has retained its technical training and education missions but

includes the colleges of arts and sciences, and business as well. Its major emphasis is on pre-professional and technical training, teacher education and business.

"The Valley" as a Symbol

Valley State is the symbol for most people when consolidation or closure is discussed. It is the youngest institution of higher learning and the least well developed. It was created to train displaced black farm workers immediately after World War II as the Delta mechanized. Its mission was later altered to train black teachers for a segregated school system, and it was arbitrarily designated as a university in the wholesale university designations of 1974. After a controversial search for a site, it was placed in a remote location on poorly drained land. The campus symbolizes hasty college site planning of its time and the buildings are representative of economy space architecture.

To antagonists, Valley represents a liability to the achievement of quality in the higher education system. To partisans, Valley represents access to higher education for many who would otherwise be denied, thus opening the door for full participation in the American economy and society to those who might not otherwise have such an opportunity. As the consolidation and closure debts focuses on Valley, the dilemma of high academic standards vs. accessibility becomes real for blacks in Mississippi.

* * * * *

The most often heard characterization of Valley is that "it is sensitive to the special needs of its students, something which other schools would not provide." "It takes kids where they are." "The faculty serves as role models for the individuals." Black students from the Delta "feel comfortable in this special environment." The meaning was clear and easily stated that most Valley students are

the product of poor schools and an isolated environment, and that Valley serves a critically important transition role for the individual into the mainstream of the world of work. The implication is equally clear that if Valley were closed, there would be no alternative institution for most of its students, and signficant numbers of students would be closed out from higher education opportunity. Several cynics stated that "if you don't spend it at Valley, you will spend it at Parchman."

* * * * *

Recognition of Special Needs of Most Black Students

Upon action of the Executive Committee of the Southern Regional Education Board of Atlanta, Georgia, Governor Bob Graham of Florida, then Chairman of the Board, appointed a 17-member Task Force on Higher Education and the schools in January, 1981. The charge to the Task Force was to consider the linkage between our schools and coileges/universities, and in particular, to select those priority issues and problems on which states, schools and colleges must act jointly in order to strengthen education at all levels. In the booklet published by the Task Force entitled *The Need for Quality* (Southern Regional Education Board, Atlanta, Georgia, June 1981, 1983), it was concluded:

> The commitment to quality for the 1980's must address the special needs of black students, many of whom have major deficiencies in academic skills. For example, at the college level, a response does not lie simply in denying admission to under-prepared blacks, although higher admission standards may be in order over the long term. A permanent solution must involve curriculum reform at the secondary and college levels, with intensification of communication and qualitative course work. To a considerable degree, the success of such reform depends on an adequate supply of highly qualified black teachers. Incentives are needed to attract high achievers among the black students in teacher education program. (p. 3.)

Mississippi, like other states, must recognize that black students of college age are the products of historical, sociological and economic conditions which have coalesced over the years to produce an exceedingly large number of low achievers. Until a well-conceived public policy can be implemented which will provide effective curriculum reform, adequate fiscal and physical resources, and a measurable quality of educational delivery which will provide for both blacks and whites sound elementary and high school preparation, and the desire excellence in education should not be predicated on a "test score only" foundation. Any realistic approach to quality in education for blacks must be viewed in light of appropriate and effective linkages among public schools, community colleges, and the University System.

* * * * *

If Valley is not closed or consolidated with another institution, the Board and Legislature, working closely with the administration at Valley, clearly must develop an institutional development program for Valley. We offer the following opinions as to what that program ought to contain.

Admission Standards: A plan for raising admission standards should be implemented as quickly as possible. We propose that, effective with the Fall enrollment of 1985, the Board make an ACT score of 13 a requirement for regular academic standing upon admission, and raise the requirement by one point at least every two years until the standard of the predominantly white institutions is

reached. At the low end of the scale, students with less than a 10 ACT score should not be admitted under any condition. As the requirement for regular admission moves up one point, the lower end cutoff score also would be raised by one point. In order to keep access as open as reasonably possible, students with ACT scores of 10 through 12 could be admitted on a conditional basis. The range for conditional admission would be kept at three points below the regular admission requirement, and thus would advance as the base score advances. The immediate impact of this move would be to place about sixty percent of the entering freshman class in a status of conditional admission. In 1984, Valley admitted 34 first-time entering freshmen with an ACT score of nine, or only eight percent of the entering freshmen class, so denying admission to applicants with an ACT score of nine should not significantly affect total enrollment. On the other hand, these changes in admission policy would signal a serious intention to improve the academic quality of the institution.

Special Requirements for Conditional Admission: The number and type of courses that a conditional student can take ought to be restricted. Also, conditional students ought to be required to enroll in developmental studies courses to strengthen their reading, writing and mathematics skills. A student ought to remain in a conditional status until he or she can achieve an ACT score of 15 or its equivalent on another nationally normed standardized test of basic academic skills, but in no case should a student be permitted to earn more than 30 academic credit hours while on conditional admission. In other words, the conditional student can be given an opportunity to challenge the college curriculum, but ought to be expected to fully qualify for regular standing the same as any other student within the first academic year of enrollment in order to remain a student in the university.

An alternative would be to permit open admission to any student with at least an ACT score of 10, but impose an "exit" requirement before the student can advance to the upper division. Those who cannot pass such an exit test would be granted an Associate Degree if a grade point average of 2.0 on a 4.0 scale had been earned in the first two academic years. The exit or progress requirements might look like this:

1. A communicative skills comprehensive examination which all students must take and pass by the end of the sophomore year.
2. A stipulated number of competencies in mathematics in which a student must demonstrate knowledge prior to moving on to the junior level.
3. A requirement that each department prepare a general comprehensive examination which students must complete prior to graduation.
4. A College Level Academic Skills Test (CLAST) similar to the one now in use in Florida. This test requires each student to demonstrate proficiency in English, Reading, Writing and Mathematics. It is required of all university students in the State University System. A student must pass three parts before being permitted to register in upper level courses.

Special Programs for Conditional Students: Given the problems black students have with the ACT admission standards, the state should continue to provide funds to Valley (and the other institutions) for the support of programs specially designed to enhance the skills required for success in college. The state already is supporting programs of this type, but the effort will have to be continued until changes in the elementary and secondary school system have begun to impact on the quality of preparation for entrance into college.

Special Programs of Excellence: There is no way to turn an entire institution around all at once, so it will be important to highly develop one program at a time according to a plan. We would urge the Board to approve, and the Legislature to support with appropriate funding, special programs at Valley which have the potential of attracting a significant number of students of all races with excellent academic backgrounds. Faculty with the best credentials possible, regardless of race, must be secured. Competitive salaries will have to be paid, and funds sufficient to do this must be made available. If the program is accreditable, it should be supported to whatever extent required to secure accreditation almost from the start. In order to assure public confidence in the development of these programs, it would be advisable that they be developed with close assistance from the Board staff and guidance from the faculties at the other seven institutions. While such a suggestion might appear on its face to be an affront to the leadership at Valley, the reality is that we found that many policymakers are skeptical that Valley can successfully overcome its current problems without substantial assistance from others outside the institution. Widespread support for the enrichment of programs at Valley may very well depend upon Valley accepting such outside help..

Guarantee of Financial Support During the Transition: The possibility exists for some short term attrition of students and faculty as weak programs are quickly terminated so that the resources currently allocated to them can be redirected toward new or other programs targeted for upgrading. Some faculty may have to be dismissed in order to secure people with more appropriate credentials. Amidst all of this change, the institution should not have to be concerned with diminishing financial support because of any downward changes in enrollment that might occur as a result. In time, the new programs will attract

more students with greater academic potential, but the political leadership must be prepared for things to get worse before they get better in this regard. We are not suggesting that this policy be continued indefinitely, but rather over a period of five to seven years. At that time, it would be appropriate to reevaluate the state's investment in Valley and determine its future then.

In conclusion, the Consultants strongly feel that some decisive action should be taken on Valley this year. The continuation of a debate about its future can only impair its effectiveness in the higher education system and doom it to greater mediocrity or failure. The Board and the Legislature are urged to resolve their concerns about restructuring the system as quickly as possible so that the leadership in higher education can get on with the important business of providing high quality education for the people of Mississippi. The dilemma over higher standards versus broad access to higher education will no doubt remain no matter what is done.

> "Mississippi owes its population remedial education. The state has that obligation to its citizens."—A Former College President
>
> "You can't forever justify remediation. College is an intellectual exercise."—Another Former College President

And that is the dilemma.

UNITED STATES' EXHIBIT 1

STATE OF MISSISSIPPI MODIFICATIONS TO THE PLAN OF COMPLIANCE TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

May 28, 1974

APPROVED BY THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MISSISSIPPI

The Board of Trustees of State Institutions of Higher Learning was made a constitutional board in its present form in 1944. The Board consists of 13 members, qualified electors appointed by the Governor by and with the advice and consent of the Mississippi Senate. Ten members must be residents of the respective districts from which they are appointed; two are appointed from the State-at-Large; and one must be a resident of De Soto County and known as the trustee for the La Bauve fund. Each member is appointed to a term of 12 years, in groups of four every four years, with the exception of the La Bauve Trustee; he is appointed for a four-year term. The Board of Trustees of State Institutions of Higher Learning is responsible for the governance of three universities, one of which maintains a professional school on a separate campus; five colleges, the Gulf Coast Research Laboratory, and the Mississippi Research and Development Center. The Board is now composed of 12 men and one woman. In 1972, Governor William L. Waller appointed the first Negro to the Board of Trustees in its history.

Members of the Board

Members with terms expiring May 7, 1984:

Mr. Bobby L. Chain, Hattiesburg, Sixth Congressional District

Robert W. Harrison, D.D.S., Yazoo City, Central Supreme Court District

Mr. Travis E. Parker, Drew, State-at-Large

Mrs. Miriam Q. Simmons, Columbia, Southern Supreme Court District

Members with terms expiring May 7, 1980:

Dr. R. C. Cook, Hattiesburg, State-at-Large

Verner S. Holmes, M.D., McComb, Seventh Congressional District

Mr. A. Boswell Stevens, Macon, First Congressional District

Mr. W. M. Shoemaker, Meridian, Fifth Congressional District

Members with terms expiring May 7, 1976:

Mr. Milton E. Brister, Kilmichael, Fourth Congressional District

Mr. Ross L. Franks, Hernando, La Bauve Trustee (De Soto County)

Mr. M. Paul Haynes, Baldwyn, Northern Supreme Court District

Mr. Mike P. Sturdivant, Glendora, Second Congressional District

Mr. Thomas N. Turner, Sr., Belzoni, Third Congressional District

Officers of the Board:

Mr. Milton E. Brister, President

Mr. W. M. Shoemaker, Vice President

SUMMARY OF DEGREE PROGRAMS AT INSTITUTIONS OF HIGHER LEARNING IN MISSISSIPPI

Alcorn State University

28 Baccalaureate Degree Programs

Delta State University

34 Baccalaureate Degree Programs
13 Master's Degree Programs
4 Specialist Programs

Jackson State University

32 Baccalaureate Degree Programs
22 Master's Degree Programs
6 Specialist Programs

Mississippi University for Women

37 Baccalaureate Degree Programs
14 Master's Degree Programs
1 Specialist Program

Mississippi Valley State University

26 Baccalaurate Degree Programs

Mississippi State University

94 Baccalaureate Degree Programs
68 Master's Degree Programs
38 Doctoral Degree Programs
18 Specialist Programs

University of Mississippi

62 Baccalaureate Degree Programs
45 Master's Degree Programs
28 Doctoral Degree Programs
7 Specialist Programs
1 Professional Program

University of Mississippi Medical Center

4 Baccalaureate Degree Programs – Health Related Professions
9 Master's Degree Programs – Medicine
9 Doctoral Programs – Medicine
3 Professional Programs – Medicine, Dentistry, Nursing

University of Southern Mississippi

106 Baccalaureate Degree Programs
73 Master's Degree Programs
37 Doctoral Programs
27 Specialist Programs

ROLE AND SCOPE OF INSTITUTIONS OF HIGHER LEARNING IN MISSISSIPPI

The following is the role and scope of Mississippi's nine degree-granting institutions:

Alcorn State University, Lorman

The Board of Trustees approved Alcorn State University to provide educational opportunities through the baccalaureate level to the citizens of Mississippi, as well as those citizens in the geographic proximity of the institution. In addition to the baccalaureate offerings, the Board has authorized the University to provide in the future academic offerings through the Master's level in the field of education. As a land-grant university, Alcorn has programs leading to the Bachelor of Science degree in Agriculture and is expected to engage in the appropriate research projects and community services in these fields. Alcorn participates with the University of Southern Mississippi in providing teachers at the UMS–Natchez Center.

The University is organized on divisional lines and offers degree programs in the following areas:

Division of Arts and Sciences (4 Departments)
Baccalaureate Degree Programs offered in 10 fields
Division of Education (3 Departments)
Baccalaureate Degree Programs offered in 8 fields
Division of Vocational Education (3 Departments)
Baccalaureate Degree Programs offered in 10 fields

Delta State University, Cleveland

Delta State University is authorized by the Board of Trustees to grant degrees through the Master's and

Educational Specialist levels, and provides educational opportunities to Mississippi citizens, and especially those living in the geographic proximity of the University.

Delta State University is organized into three schools:

School of Arts and Sciences (7 Departments–1 Division)
Baccalaureate Degree Programs offered in 20 fields
Master's Degree Programs offered in 4 fields
School of Business (3 Departments)
Baccalaureate Degree Programs offered in 8 fields
Master's Degree Program offered in 1 field
School of Education (5 Departments–1 Division)
Baccalaureate Degree Programs offered in 6 fields
Master's Degree Programs offered in 8 fields
Educational Specialist Degree offered in 4 fields

Jackson State University, Jackson

Located in Mississippi's capital city, Jackson State University has recently seen an increase in students and, in turn, an increase in programs. Due to this, during the past year one of the existing schools which Jackson State is organized into for instructional purposes, was divided to form to separate schools, bringing to four the number of academic divisions on campus.

School of Liberal Studies (14 Departments)
Baccalaureate Degree Programs offered in 22 fields
Master's Degree Programs offered in 13 fields
School of Business and Economics (4 Departments)
Baccalaureate Degree Programs offered in 4 fields
Master's Degree Programs offered in 2 fields

School of Education (9 Departments)
Baccalaureate Degree Programs offered in 6 fields
Master's Degree Programs offered in 7 fields
Educational Specialist Degree offered in 6 fields
School of Industrial and Technical Studies (2 Departments)
Baccalaureate Degree Programs offered in 2 fields
Master's Degree Programs offered in 1 field

Recently, a Center for Urban Studies has been established at Jackson State University which will offer degrees through an interdisciplinary program.

Mississippi University for Women, Columbus

Mississippi University for Women is unique in being the first state-supported institution for women established in the nation and today remains as one of the few institutions for women in the nation. Providing educational opportunities to the female citizens throughout the State, M. U. W. is divided for instructional purposes into 19 departments and 1 school.

Nineteen Academic Departments
Baccalaureate Degree Programs offered in 36 fields
Master's Degree Programs offered in 14 fields
Educational Specialist Degree offered in 9 fields
School of Nursing
Baccalaureate Degree Program offered in 1 field
Associate Arts Degree Program offered in 1 field

Mississippi Valley State University, Itta Bena

The youngest of the state-supported institutions, Mississippi Valley State University is divided for instructional organization into 4 divisions:

Division of Arts and Sciences (7 Departments)
Baccalaureate Degree Programs offered in 20 fields
Division of Business (2 Departments)
Baccalaureate Degree Programs offered in 2 fields
Division of Education (2 Departments)
Baccalaureate Degree Programs offered in 2 fields
Division of Technical Education (2 Departments)
Baccalaureate Degree Programs offered in 2 fields
Associate Arts Degree Program offered in 1 field

In addition to the baccalaureate offerings, the Board has authorized this institution to provide, in the future, academic offerings through the Master's level in elementary education.

Mississippi State University, Mississippi State

Encompassing the full expectations of a traditional land-grant university, Mississippi State University offers extensive degree programs and research facilities leading to the Doctoral degree.

Besides the academic offerings on campus, Mississippi State offers services which are available to all of the citizens of Mississippi. The Cooperative Extension Service, a program which has agents in all 82 of the state's counties, and the Agricultural and Forestry Experiment Station are two agencies which are far-reaching to Mississippi's agricultural and academic population alike.

Besides these two programs, Mississippi State is responsible for extensive organized research in the fields of agriculture, forestry, engineering and business and in

other academic areas. Mississippi State administers degree-completing centers at the Universities Center in Jackson and in Meridian, as well as an engineering degree program in Vicksburg.

The University is divided for academic organization into five colleges and one school.

College of Agriculture (16 Departments)
- Baccalaureate Degree Programs offered in 21 fields
- Master's Degree Programs offered in 17 fields
- Doctoral Degree Programs offered in 15 fields
- Specialist and other degrees offered in 10 fields

College of Arts and Sciences (18 Departments)
- Baccalaureate Degree Programs offered in 34 fields
- Master's Degree Programs offered in 18 fields
- Doctoral Level Degree Programs offered in 7 fields

College of Business and Industry (5 Departments)
- Baccalaureate Degree Programs offered in 10 fields
- Master's Degree Programs offered in 7 fields
- Doctoral Degree Program offered in 7 fields

College of Education (12 Departments)
- Baccalaureate Degree Programs offered in 12 fields
- Master's Degree Programs offered in 12 fields
- Doctoral Degree Programs offered in 5 fields
- Specialist and Certificate Programs in 8 fields

College of Engineering (12 Departments)
- Baccalaureate Degree Programs offered in 13 fields
- Master's Degree Programs offered in 11 fields
- Doctoral Degree Programs offered in 4 fields

School of Architecture and Environmental Design
(To begin operations in 1974)

School of Forest Resources (3 Departments)
- Baccalaureate Degree Programs offered in 4 fields
- Master's Degree Programs offered in 3 fields

University of Mississippi, University

The oldest of the state-supported institutions of higher learning, the University of Mississippi has long stood high in academic circles throughout the nation. The institution holds charter membership in academic organizations such as the Southern Association of Colleges and Schools and the National Association of State Universities.

On the main campus, the University is organized for instruction into one college and five schools, two of them, the School of Pharmacy and the School of Law being professional schools.

Besides the programs offered on the main campus, the University offers continuing education and extension courses at degree-completing centers in Jackson (Universities Center) and in Tupelo.

Extensive research work is done on the main campus in pharmaceutical sciences as well as in business, social sciences, government and other fields.

The following describes the scope of the degree programs offered:

College of Liberal Arts (22 Departments)
- Baccalaureate Degree Programs offered in 31 fields
- Master's Degree Programs offered in 20 fields
- Doctoral Degree Programs offered in 12 fields
- Educational Specialist Program offered in 1 field

School of Business Administration (5 Departments)
- Baccalaureate Degree Programs offered in 15 fields
- Master's Degree Programs offered in 5 fields
- Doctoral Degree Programs offered in 3 fields

School of Education (8 Departments)
- Baccalaureate Degree Programs offered in 10 fields
- Master's Degree Programs offered in 7 fields
- Doctoral Degree Programs offered in 6 fields
- Educational Specialist Degree Programs offered in 6 fields

School of Engineering (5 Departments)
- Baccalaureate Degree Programs offered in 5 fields
- Master's Degree Programs offered in 6 fields
- Doctoral Degree Programs offered in 2 fields

School of Law (Professional School)

School of Pharmacy
- Baccalaureate Degree Programs offered in Pharmacy
- Master's Degree Programs offered in 7 fields
- Doctoral Degree Programs offered in 5 fields

University of Mississippi Medical Center, Jackson

The University of Mississippi Medical Center unites the inter-related activities of education in the health sciences on one metropolitan campus and accepts responsibility for teaching, research, service and leadership in this field. Its programs embrace training for physicians, nurses and related members of the health team, graduate study in the basic medical sciences and the delivery of medical care in the teaching hospital and clinics.

The University of Mississippi Medical Center encompasses the following schools, two of them professional:

School of Dentistry (Professional)
- (To begin operations in 1974)

School of Health Related Professions
- Baccalaureate Degree Programs offered in 4 fields

School of Medicine (Professional)
- Offers M. D. Programs as well as Master's and Ph. D. programs in 9 specialized fields

School of Nursing
- Offers one Baccalaureate Degree Program and one Master's Level Program

University of Southern Mississippi, Hattiesburg

The University of Southern Mississippi offers to the citizens of the State, and more explicitly to the residents of South Mississippi, the advantages of educational opportunities on the main campus or at the two degree-completing centers administered by this institution, USM—Gulf Park and USM—Natchez.

Organized for academic instruction into three colleges, six schools and one division, the University of Southern Mississippi, the youngest of the state-supported universities, has been a dynamic institution regarding the growth of student body, faculty and course work.

Recently, this institution has initiated an extensive program of scientific and technological programs, as well as providing the proper research facilities for advanced degree work.

The College is organized for academic instruction into the following colleges and schools:

College of Education and Psychology (10 Departments)

Baccalaureate Degree Programs offered in 21 fields
Master's Degree Programs offered in 21 fields
Doctoral Degree Programs offered in 19 fields
Educational Specialist Degree Programs offered in 21 fields

College of Liberal Arts (10 Departments)
Baccalaureate Degree Programs offered in 33 fields
Master's Degree Programs offered in 22 fields
Doctoral Degree Programs offered in 9 fields

College of Science and Technology (10 Departments)
Baccalaureate Degree Programs offered in 19 fields
Master's Degree Programs offered in 9 fields
Doctoral Degree Programs offered in 6 fields
Educational Specialist and other degrees offered in 6 fields

School of Business Administration (5 Departments)
Baccalaureate Degree Programs offered in 10 fields
Master's Degree Programs offered in 5 fields

School of Fine Arts (5 Departments)
Baccalaureate Degree Programs offered in 10 fields
Master's Degree Programs offered in 5 fields
Doctoral Degree Programs offered in 2 fields

School of Health, Physical Education and Recreation (4 Departments)
Baccalaureate Degree Programs offered in 5 fields
Master's Degree Programs offered in 4 fields
Doctoral Degree Program offered in 1 field

University of Southern Mississippi, Hattiesburg

School of Home Economics (4 Departments)
Baccalaureate Degree Programs offered in 9 fields
Master's Degree Programs offered in 7 fields

School of Nursing
Baccalaureate Degree Program offered in 1 field

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I. General Scope of The Plan of Compliance

This Plan has as its basic objective the improvement of educational opportunities for all citizens of the State of Mississippi with particular emphasis on equal access and retention for members of minority races* to be enrolled and/or employed at all public colleges and universities in Mississippi. Listed below are more specific elements of the Plan:

1. The role and scope of each institution is described in the appropriate section of the Plan in a non-racial manner. As proposed by the Plan, students will continue to make freedom of choice selections of the institutions which they will attend based upon characteristics other than racial, such as, the uniqueness of the program of study, the superior quality of the program, the geographic location of the institution, the level of study and the relative costs of attending different institutions.
2. The Plan provides statewide procedures, as well as specific plans of action by the individual institutions. Public institutions of higher learning encompassed in the Plan are nine senior institutions governed by the Board of Trustees of State Institutions of Higher Learning. A description of this governing board is included in the appropriate section of the Plan.
3. Projections expressed in numerical ranges are made as to the anticipated impact on greater desegregation of all public senior colleges and universities in Mississippi. (See Table I) These projections are not goals or quotas but only reasonable expectations resulting from continued and intensified good-faith efforts on the part of authorities of public higher education in Mississippi. The Plan calls for monitoring processes which will identify those elements of the Plan that are not bringing about the anticipated results and will make the necessary adjustments which will assure compliance to Title VI of the Civil Rights Act of 1964.

* "Minority race" as used in this Plan means racial identification either as the Caucasian race (white) or all other races. The "other race" as used in this Plan means the race historically not present in significant numbers on the campus in question.

4. Institutions which have been historically black are not to carry a greater burden than the traditionally white institutions in implementing the acceptable Plan of Compliance.
5. Individuals involved in the development of the statewide Compliance Plan are identified, as are all authorities responsible for implementation thereof.
6. Projected costs to implement the Plan and the necessary actions from the Mississippi Legislature are estimated and described.
7. The Plan provides for semiannual reporting as to the impact of the described actions to comply with Title VI.
8. Racial discrimination, as well as discrimination by sex, is prohibited as to nonacademic employment and contractual and institutional-related services provided to all public institutions of higher learning.

II. The Student Objective of the Plan of Compliance is to Enroll a Greater Number of Students of the "Other Race" at Each Public Institution of Higher Learning

Preserved in all prescribed actions of this Plan is the principle of freedom of choice for the student as to the institution he or she plans to attend. There shall be no assignment of students against their will to specific institutions for the purpose of racial balance in enrollment. Listed below are specific procedures contemplated by the Plan.

1. The Board of Trustees of State Institutions of Higher Learning directs each institution to continue to develop procedures for recruitment and admission which will address themselves specifically to the student of the "other race." All institutions will establish the following specific recruiting programs and procedures by October 15, 1974, if not already in practice.

   a. All high schools and junior colleges in the state or all of those in a certain region of the state where recruiting is done by specific institutions will be visited. Should a high school or a junior college not permit in a nondiscriminatory manner all public universities to visit their campus for recruiting purposes, then no public university is authorized to send recruiters to that high school or junior college.

   b. Each public university will formally communicate with counselors at all "other race" schools in their respective recruiting areas and invite them to visit the campuses for special programs relating to the educational opportunities for "other race" students at the various institutions.

   c. During the recruiting visits to high schools and junior colleges each university will use audio-visual aides that show multi-race enrollment with active participation in academic as well as extra-curricula activities.

   d. Each university will prepare news releases featuring minority students and faculty in academic and extra-curricula activities.

   e. The projected impact on enrollment of minority students is identified in Table I of this Plan.

2. The Board of Trustees of State Institutions of Higher Learning shall coordinate student recruiting for the public universities as follows:

   a. Beginning with recruiting efforts in the year 1974-75, instruct the historically black institutions to begin their recruiting efforts sixty (60) days prior to the time that the traditionally white institutions begin their recruiting efforts.

   b. During the fall semester of 1974, prepare and disseminate publications to all schools and junior colleges describing each institution's educational opportunities with particular attention to areas of specialization and uniqueness.

   c. During the fall semester of 1974, conduct orientation sessions for each insitution's chief recruitment officer.

   d. During the fall semester of 1974, conduct orientation sessions for high school counsel-

ors and administrators emphasizing the academic offerings of each of the institutions of higher learning.

e. Instruct each institutional representative when visiting a high school or junior college to invite all students affected to the recruiting program.

f. Require the minority recruiter at each institution to be a part of the minority counseling team.

3. Each campus will establish, unless it has already done so, a multi-ethnic recruiting team which includes a minority recruiter.

4. It is understood by the governing authorities of public institutions of higher learning in Mississippi, that, while student recruitment is a necessary element in bringing about a higher degree of desegregation, [illegible]ctive and well-developed academic progr[illegible] will be the primary incentive for students sele[illegible] a college or university. Elsewhere in the Plan academic programs are treated.

5. Campus appearance of each institution will be closely scrutinized by the governing board; and where found unattractive, improvements will be made as funds are made available by the Legislature. This will help attract students and employees of the "other race." There is another section of the Plan dealing specifically with new construction for the various institutions of higher learning.

6. Beginning with the fall semester of 1974, each institution will establish a system of evaluation upon admission of minority students so that their capabilities can be assessed and deficiencies corrected.

The needed courses and professorial assistance are to be offered without extra charge. Efforts will be made to determine the causes for dropouts; and when needed, remedial programs in reading, English, writing, spelling, arithmetic, civics, economics, and library usage will be provided. However, it is fully understood that academic standards will not be lowered; rather, the less prepared students will receive special assistance that hopefully will enable them to reach the academic standards of the respective institutions. All reasonable steps will be taken by each institution to prevent a reduction in the percentage of black students graduating from the public universities in the state. Enrollment and graduation statistics will be maintained by race in order that appropriate monitoring can be done. The retention rates of black students at the various universities are expected to equal that of all students; however, in order that academic standards not be lowered, additional time may be necessary for graduation.

Counseling centers with minority leadership will be established during the 1974-75 academic year. Students needing tutorial instruction will have the opportunity to select minority graduate assistants for such tutorage. Developmental education programs are to be created to increase student competencies in basic subject areas, study skills, and interpersonal communications. These programs retain students within a competency level until they make an average passing grade.

7. The administration of each institution will make semi-annual reports to the Board of Trustees describing the nondiscriminatory practices of the various activities of the institutions. These reports will be reviewed by minority participants in each of seven (7) areas listed below:
   a. Student teaching and other practicum assignments
   b. Intramural and intercollegiate athletics
   c. Student financial assistance
   d. Student housing
   e. Student employment and student placement for employment after graduation
   f. Student health care
   g. All extra-curricula activities under the patronage of the institution.

Any other potential areas of discrimination identified by minority students and faculty members will be added to the regular reporting process. All alleged discrimination made in writing by minority students and/or faculty members will receive complete investigation by the members of the Instruction, Administration, and Police Committee of the Board of Trustees; and the chairman of the committee will dispatch a review team to the institution where discrimination is implied.

III. The Faculty and Staff Objective of the Plan of Compliance is the Employment of a Greater Number of the "Other Race" by Each Institution.

Each institution is required to have an affirmative action plan pertaining to equal employment opportunities. The statewide Plan, as well as institution-level plans, gives particular emphasis to increasing the employment level of members of the "other race," especially at the managerial, professional, and technical positions.

Specifically, the Plan provides for the following action by all institutions:

1. Special efforts are required by the Board of Trustees of State Institutions of Higher Learning to employ, train, and promote qualified members of the "other race." Projections expressed in numerical ranges are made and timetables are indicated as to employing faculty of the "other race." (See Table II) The projections in regard to faculties of traditionally white institutions take into account the limited supply of qualified black faculty. Institutions of higher learning throughout the nation, as well as business and industry, are vigorously seeking well-trained and highly qualified black employees.
2. Insofar as it is practical to do so, vacancies in faculty and administrative positions at historically white institutions will be filled with qualified black personnel. Each institution has a projected employment schedule for minority faculty appointments on an annual basis until 1980. A commitment has been received from each institution to continue to employ and to intensify its good-faith effort to employ the numerical range of

"other race" personnel as indicated in Table II of this Plan.

The Board of Trustees of State Institutions of Higher Learning shall assist in faculty recruitment by maintaining, for institutional use, current information on persons who hold graduate degrees from Mississippi institutions and on persons who make application for faculty employment at the various institutions and who are not employed by these institutions. Each institution will forward to the Board Office all applications of persons not employed. After executing the applications on hand, each institution will make use of the centralized pool of available qualified faculty as it fills various positions with minority personnel. Each institution, without altering any legitimate criteria for employment, will make selections so as to increase the desegregation of the faculty at each institution.

3. Special efforts along with scholarship awards are to be made in recruiting qualified graduate students of the "other race" to be trained and employed as future teachers at institutions of higher learning in Mississippi.

   During the academic year of 1974-75, the three universities with doctoral programs may award, if possible, twenty (20) graduate-assistant fellowships to qualified students of the "other race." These fellowships are to be used to train future terminal degree teachers. Each of the three universities which offer programs only through the master's and educational specialist degrees may award, if possible, ten (10) work-study fellowships to graduate students of the "other race." These

awards are to be made to students who are committed to continue educational programs in teacher preparation until they earn terminal or educational specialist degrees.

Each year a total of ninety (90) new minority students are anticipated to participate in this program; by 1980, the seven-year accumulation will provide a potential of 630 additional minority faculty. During the seven-year term of the Plan, a substantial amount in dollars will be invested in additional minority faculty prospects. The Board will make a special request to the 1975 Mississippi Legislative Session for $345,000 to underwrite this program during the 1974-75 school year.

4. Faculty exchange arrangements between institutions are scheduled and continue to be made to increase the exposure of the "other race" to faculties, students, and all other personnel of the various institutions until permanent solutions can be established.

   Each institution with doctoral programs will seek ten (10) minority faculty members from "other race" institutions to participate in instructional programs during 1974-75. The historically white institutions without doctoral programs, Delta State University and Mississippi University for Women, will seek five (5) minority faculty members of "other race" institutions to participate in instructional programs during 1974-75.

   Additional funds of $2,000 per faculty member will be made available for traveling and/or moving expenses for each of the aforementioned undertakings.

   The Board of Trustees will make a special request for $80,000 to the 1975 Mississippi Legisla-

tive Session to underwrite this program which will provide the historically white institutions with the service of forty (40) minority faculty members during the 1974-75 school year.

5. Cooperative programs between historically white and black institutions are required by the Plan for the initial years involving both faculty and students. Special resources of $225,000 will be requested from the 1975 Legislative Session to support the cooperative programs.

   Each institution is required to engage in at least one cooperative program during the 1974-75 school year with institutions that have been historically of the "other race." These cooperative programs must involve significant numbers of faculty members and/or students as is determined by the Instruction, Administration, and Policy Committee of the Board of Trustees. Additional funds up to $25,000 per institution will be made available from state appropriations requested for this purpose.

6. Sufficient financial resources have been provided by the Mississippi Legislature so that faculty salaries will be competitive enough to attract qualified faculty members in all fields which will have a positive effect upon greater faculty desegregation. A fourteen (14) percent increase in operating funds was appropriated by the Mississippi Legislature for the year 1974-75. Allocations to individual institutions are identified in Table III, which also shows the approved percentage increase in average salaries. The average salary for full professors at each institution is also shown in Table III.

7. Incumbent personnel of each institution will have opportunities to upgrade their employment credentials sufficiently to be promoted and to be offered new positions; special leaves of absence are to be made available to minority faculty members for this purpose. Additional funds will be requested from the Legislature to provide fourteen (14) sabbatical leaves at each of the two historically black institutions without graduate programs during the 1974-75 school year. These funds will make it possible for faculty members to study full time toward a terminal degree in their respective teaching fields. A stipend of $8,000 per sabbatical leave or a total of $224,000 will be requested from the 1975 Legislature.

8. The Plan calls for the establishment and funding of distinguished professorships as a means to attract white students to historically black schools and qualified black faculty to traditionally white schools. During the academic year of 1974-75, each institution with doctoral programs will attempt to obtain at least two professors of the "other race" as distinguished lecturers. Those institutions which do not offer doctoral programs will attempt to obtain at least one "other race" distinguished lecturer. Funds in the amount of $30,000 per full-time position or a total of $270,000 will be requested from the 1975 Legislative Session for this purpose.

IV. The Program and Curricular Objective of The Plan of Compliance Is to Attract More Faculty and More Students of the "Other Race" at Each Public Institution of Higher Learning

This section of the Plan concentrates its attention to the objectives of altering curricula and programs, without lowering standards, in the nine state-supported universities in Mississippi, University of Mississippi Medical Center included. This should help stimulate changes in the racial mix on the campuses. A seven-year timetable has been established as a reasonable time frame for the accomplishment of alterations included in the Plan; the target date is 1980.

Four areas of opportunities for desirable change in the realm of curricula and programs have emerged. These are as follows:

Strengthening Existing Programs
New Programs
Reallocation of Existing Programs
Cooperative Programs

Specific actions included in the Plan are as follows:

1. Strengthening Existing Programs

   The individual institutional plans are submitted as an attachment hereto as being indicative of the proposed programs and curricula changes desired by each institution but not yet having been evaluated by the Board of Trustees of State Institutions of Higher Learning. The Board will consider each of these specific recommendations; and, as the Board deems necessary, will adopt and establish priorities from these recommendations to carry out the objectives of the Plan of Compliance.

   A special request will be made to the 1975 Legislative Session to appropriate $2,998,650 to underwrite the various approved programs. Table IV identifies the proposed allocation of said funds to the respective institutions and specific purposes for which additional funds will be used.

The Plan places a high priority on strengthening existing programs at the three historically black institutions. As a result of action by the Mississippi Legislature in 1974, the historically black institutions were renamed "universities." These three universities are directed to begin immediately to improve the presently offered basic academic and professional programs sufficiently to obtain professional and specialized accreditation. Listed below are the contemplated plans for the three universities for 1974-75:

a. Jackson State University will initiate efforts to obtain accreditation in its business curricula through the master's degree from the American Association of Collegiate Schools of Business.

b. Alcorn State University and Mississippi Valley State University will begin immediately to strengthen their programs sufficiently to gain NCATE accreditation of selected teacher education programs through the bachelor's degree.

c. Mississippi Valley State University will proceed with haste in obtaining accreditation for the two recently approved programs in family and community service and environmental health education, as well as the traditional programs in industrial arts. All of these programs show high promise of attracting "other race" students.

2. New Programs

Each institution has identified in their individual plan certain new programs that the institutions believe will have an impact in bringing about a greater degree of multi-ethnic composition of students and faculty. The Board of Trustees of State Institutions of Higher Learning will consider these proposals and upon approval will make appropriate recommendations to the Mississippi Legislature for sufficient funds to implement the new programs. However, priority for new programs will be given to the three historically black universities.

The Board of Trustees of State Institutions of Higher Learning has approved the following action regarding new programs for the historically black institutions:

a. Alcorn State University

1. Alcorn has been authorized to start a new program in intercultural studies beginning with the fall semester of 1974. It is believed that this program will attract white students. The Board will request an additional appropriation of $45,000 to underwrite the start up of this program in 1974-75. A description of intercultural studies is attached to this Plan.
2. Alcorn has been instructed to make feasibility studies as to the need for programs leading to degrees in optometry and mortuary science. Should the studies indicate that these programs are needed and will have a significant attraction for white students, the Board will

approve the programs and request the Mississippi Legislature to make the necessary appropriation of funds to underwrite the cost of these new programs.

b. Jackson State University

The Board has approved new programs at Jackson State in urban affairs, mass media, and additional master's degree programs in nine basic areas of academic study. In addition to a $2,000,000 grant recently received from the federal government by Jackson State University for the purpose of developing and strengthening the University, the Board of Trustees will request from the 1975 Legislative Session an additional $150,000 to assist in the start-up cost of these new programs.

c. Mississippi Valley State University

The Board has approved a new program in population planning for Mississippi Valley. Although the University has at present some offerings in family planning, this authorization directs a program of broader scope in teaching, research, and public service. One of mankind's most pressing problems is that of overpopulation; there are unlimited opportunities for accomplishment in studies dealing with this problem. It is believed that this program will attract white students to attend Mississippi Valley. This program is a part of a special $700,000 request for Mississippi Valley in 1975.

3. Reallocation of Existing Programs

In recent years, the institutions of higher learning in Mississippi have been authorized to establish off-campus, degree-completing centers. In the City of Jackson, Mississippi, a degree-completing center is currently administered jointly by Jackson State University, Mississippi State University, and the University of Mississippi. Another degree-completing center in Natchez, Mississippi, is administered by the University of Southern Mississippi with Alcorn State University participating in the instructional programs.

Listed below are specific requirements of the Plan:

a. Under this Plan of Compliance, effective with the fall semester 1974, programs presently taught by Jackson State University on its campus at Jackson, Mississippi, shall be removed from the course offerings at the Universities Center at Jackson, Mississippi, and all institutions under the governance of the Board of Trustees may offer at the Universities Center, upon the approval of said Board, any unique or professional programs which are not offered at Jackson State University.

As Jackson State determines sufficient demand for new programs on its campus, the Board of Trustees will give priority to Jackson State over the Universities Center in approving new programs. Even though other universities may have been authorized to offer courses for part-time study at the Universities Center, when and if Jackson

State desires and requests with sufficient justification the approval of these same courses, the Board will give Jackson State priority in offering the courses if they fall within the accepted role and scope assignment to Jackson State University.

b. Alcorn State University and the University of Southern Mississippi will jointly participate in the degree-completing center at Natchez, Mississippi. Alcorn faculty will teach 25 percent of the baccalaureate and master's degree courses at said Ntachez Center. Even though Alcorn is 40 miles north of the Natchez Center and even though Alcorn does not presently have a graduate program, there are qualified faculty members available at Alcorn to teach graduate courses at the Natchez Center.

4. Cooperative Programs

There are some excellent examples of cooperation between formerly black and formerly white institutions in the State. For several years, Delta State University and Mississippi Valley State University have had an exchange of faculty. Mississippi Valley now releases two (2) faculty for part-time employment at Delta State University. Alcorn State University and the University of Southern Mississippi are working together on a reading program. The University of Mississippi Medical Center is cooperating with Alcorn State University, Jackson State University, and Mississippi Valley State University in a variety of health related programs. Alcorn State University and Mississippi State University are cooperating in a

large agricultural research and extension program. Jackson State University, Mississippi Valley State University, and Mississippi State University are in the final planning stage for a cooperative program in applied mathematics and engineering.

The Plan of Compliance requires institutional heads to select areas where cooperation between two or more institutions can be beneficial. As stated in Item 5 of Section III, each institution will engage in at least one cooperative program during the year 1974-75. Cooperative programs are not without costs; this Plan provides for cost projections necessary to implement the additional programs and a special request for $225,000 will be made to the Mississippi Legislature during the 1975 Session to provide these cooperative programs.

V. Financial Resources Analysis of Educational and General Operating Funds and Physical Facilities

The Mississippi Legislature appropriates educational and general funds to the Board of Trustees of State Institutions of Higher Learning on an annual basis. The Board of Trustees allocates funds to the respective institutions according to an approved formula. Through this formula procedure, the funds are allocated to comparable institutions in an equitable manner using the identical elements in the calculating process. Listed in Table V is a four (4) year financial analysis of state appropriations allocated to various institutions in relationship to the production of student credit hours according to the level of study. Even though the historically black institutions have received comparable funds during the past four (4) years, they have not yet attracted significant numbers of white students. In order to strengthen further these institutions, the Board of Trustees will make a special request to the 1975 Mississippi Legislature to appropriate additional funds for each of these three (3) institutions. Table IV identifies the amounts and purposes for which these funds will be used.

Appropriations for the construction of physical facilities for Mississippi institutions of higher learning since 1966 are identified in Table VI. Of the total $109,177,560 applied to the eight (8) campuses during the nine (9) year period, the historically black institutions received $44,444,727 or 40.7 percent of the total appropriations. The portion of student enrollment for the year 1973-74 at the historically black institutions is 24 percent of the total student enrollment at the eight (8) campuses. Table VI-A identifies the physical facility projects approved by the Board of Trustees for which funds will be requested from the Mississippi Legislature during the period of the Plan.

The physical investment including appropriations for the year 1974-75 is listed below in original cost amounts in millions of dollars:

Alcorn State University	20.0
Delta State University	23.1
Jackson State University	19.7
Mississippi University for Women	25.6
Mississippi Valley State University	17.5

The newest campuses in the system of higher education are Jackson State University, established in 1940, and Mississippi Valley State University, established in 1952.

VI. Public Junior Colleges Advised of the Contents in the Plan of Compliance

The Board of Trustees of State Institutions of Higher Learning has no control of the boards and agencies controlling or guiding public junior colleges in Mississippi; but the Board will make known to said boards and agencies that which is contained in this Plan of Compliance.

Each university under the governance of the Board of Trustees of State Institutions of Higher Learning will continue in a nondiscriminatory manner to cooperate fully with the public junior colleges in the recruitment of all prospective students for the senior institutions. The admission and registration authorities of each university will continue to work closely with the appropriate junior college officials in providing students of all races with complete information as to the transfer of credits between institutions. These said officials of both segments of post-secondary education will continue to have regular meetings, conferences, and workshops relating to the recruitment and admission of students as well as the articulation of academic credit.

In addition to the day to day individual communication between personnel of the junior and senior institutions, there are two formal conferences held each year which bring together all segments of higher education in the State of Mississippi. The purpose of the conferences is to share and cooperate in programs beneficial to the growth and development of higher education in the state.

The Junior College Commission of the State of Mississippi has certain powers and duties as to the establishment and operation of the junior colleges in the state. Of the ten (10) members of the Commission, there are three institutional heads from the university segment of higher education. These three members will continue to make maximum efforts in helping to coordinate, in accordance with the Plan of Compliance, the educational programs of the junior colleges and the universities.

All nursing education in the State of Mississippi is approved and accredited by the Board of Trustees of State Institutions of Higher Learning. There are nine (9) associate degree nursing schools in the junior college segment of post-secondary education. The Board of Trustees will continue to approve and accredit all nursing programs in accordance with the Plan of Compliance.

All segments of higher education in the State of Mississippi, that is, private, public, junior, and senior institutions, select individuals to serve on the Council of Accreditation. This body visits various institutions from time to time pertaining to accreditation standards. Recommendations are made to the Mississippi Association of Colleges and Universities and the Mississippi Commission on College Accreditation. The membership of the Mississippi Commission on College Accreditation is composed of four (4) members, one of whom is the Executive Secretary and Director of the Board of Trustees of State Institutions of Higher Learning. As decisions are made pertaining to ac-

creditation, this member will encourage all public institutions to abide by the said Plan of Compliance.

Monitoring Process to be the Responsibility of the Board of Trustees of State Institutions of Higher Learning

The Board of Trustees of State Institutions of Higher Learning as the governing authority for the nine (9) senior institutions of higher learning will coordinate and supervise the implementation of the Plan. The Board will make semiannual reports to the Office for Civil Rights, Department of Health, Education, and Welfare, which will identify the impact of the Plan on greater desegregation of the institutions. Elements of the monitoring process are identified more specifically in Section II, Item 7, of the Plan.

Individual Plans of Institutions

The individual plans of the nine senior public institutions of higher learning attached to this Plan are supplemental to those submitted to the Office for Civil Rights on June 7, 1973.

All new program proposals identified in the individual plans will be genuinely considered by the Board of Trustees from time to time and upon approval will make the appropriate request to the Mississippi Legislature for the necessary financial resources. As the Board considers the need for new programs and financial resources, the target date of 1980 for completing the Compliance Plan will be kept in mind.

Respectfully submitted,

/s/ MILTON E. BRISTER

Milton E. Brister, President
Board of Trustees of State
Institutions of Higher Learning
P.O. Box 2336
Jackson, Mississippi 39205

TABLE I

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
PROJECTED STUDENT ENROLLMENT 1974 THROUGH 1980
BY RACE AND INSTITUTION

	Actual 1973-74		1974-75		1975-76		1976-77		1977-78		1978-79		1979-80		1980-81	
Institution	All Races	Minor. Races	All Races	Minor. Races	All Races	Minor. Races	All Races	Minor. Races	All Races	Minor. Races	All Races	Minor. Races	All Races	Minor. Races	All Races	Minor. Races
Alcorn State Univ.	2,568	8	2,600	26	2,662	39	2,734	58	2,859	87	2,974	130	3,155	195	3,350	292
Delta State Univ.	3,187	647	3,239	686	3,306	727	3;349	756	3,397	779	3,433	802	3,497	840	3,569	889
Jackson State Univ.	5,205	88	5,525	276	5,857	469	6,208	683	6,508	921	7,040	1,197	7,533	1,507	7,533	1,507
Miss. State Univ.	10,000	663	10,000	893	10,000	1,173	10,000	1,503	10,000	1,883	10,000	2,313	10,000	2,793	10,000	3,323
Miss. Univ. for Women	2,752	345	2,785	371	2,842	414	2,820	447	2,790	475	2,800	503	2,850	536	2,850	536
Miss. Valley State Univ.	2,577	18	2,600	25	2,650	50	2,700	110	2,750	150	2,800	200	2,900	250	3,000	300
Univ. of Miss.	7,804	448	8,017	538	8,233	621	8,458	713	8,676	798	8,858	882	9,035	1,036	9,222	1,036
Univ. of Miss. Medical Center	866	71	940	82	1,012	106	1,093	135	1,168	161	1,266	194	1,304	235	1,340	242
Univ. of Southern Miss.	9,041	641	9,100	750	9,200	1,000	9,500	1,200	9,600	1,400	9,700	1,800	9,800	1,800	10,000	2,000

TABLE II

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
PROJECTED FACULTY EMPLOYMENT 1974 THROUGH 1980
BY RACE AND INSTITUTION

Institution	Actual 1973-74 All Races	Actual 1973-74 Minor. Races	1974-75 All Races	1974-75 Minor. Races	1975-76 All Races	1975-76 Minor. Races	1976-77 All Races	1976-77 Minor. Races	1977-78 All Races	1977-78 Minor. Races	1978-79 All Races	1978-79 Minor. Races	1979-80 All Races	1979-80 Minor. Races	1980-81 All Races	1980-81 Minor. Races
Alcorn State Univ.	126	52	126	52	131	54	134	56	140	59	146	61	155	65	160	67
Delta State Univ.	168	3	170	4	171	6	173	8	174	10	175	12	177	15	179	18
Jackson State Univ.	330	88	339	92	349	97	359	101	370	106	381	110	392	118	392	118
Miss. State Univ.	509	31	509	32	509	34	509	36	509	38	509	40	504	43	509	46
Miss. Univ. for Women	167	5	164	9	167	14	166	19	164	24	165	29	168	36	168	36
Miss. Valley State Univ.	141	33	144	34	150	40	158	45	165	48	175	52	180	54	188	56
Univ. of Miss.	427	12	428	17	429	22	430	27	431	32	432	37	433	42	434	47
Univ. of Miss. Medical Center	260	29	305	22	356	27	385	31	402	35	417	37	448	48	448	48
Univ. of Southern Miss	436	15	446	17	456	20	464	24	471	29	485	35	492	42	500	50

TABLE III

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

STATE APPROPRIATION AND SALARY STATISTICS 1973-74 – 1974-75

Institution	State Appropriation 1974-75 (1)	% Increase in State Approp. (2)	Budgeted Ave. Sal. Increase 1974-75 (3)	% Increase in Average Salary (4)	Ave. Salary of Full Professor 1974-75 (5)
Alcorn State University	$ 3,058,470	12.83%	$1,420	12.63%	$17,584
Delta State University	4,106,373	11.70	684	5.07%	18,660
Jackson State University	6,992,892	15.52	928	7.32%	19,093
Mississippi State University	13,859,445	15.26	889	5.91	20,861
Mississippi University for Women	3,666,964	14.24	753	5.84	17,244
Mississippi Valley State University	2,902,358	13.48	1,330	13.09	15,144
University of Mississippi	12,102,686	12.79	385	2.57	19,148
University of Southern Mississippi	12,613,205	16.91	609	4.17	19,514
	$59,302,393	14.59%	$ 777	5.61%	$19,277

TABLE IV

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING PROPOSED ALLOCATION OF SPECIAL REQUEST TO THE 1975 MISSISSIPPI LEGISLATURE TO HELP IMPLEMENT THE COMPLIANCE PLAN

Alcorn State University	$ 700,000
Delta State University	185,000
Jackson State University	600,000
Mississippi State University	185,000
Mississippi University for Women	185,000
Mississippi Valley State University	700,000
University of Mississippi	185,000
University of Mississippi Medical Center	73,650
University of Southern Mississippi	185,000
Total Special Request	$2,998,650

TABLE IV-A

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING PROPOSED USE OF SPECIAL LEGISLATIVE APPROPRIATION OF $2,998,650

Alcorn State University		$700,000
Faculty Improvement Through Sabbatical Leaves (14)	$112,000	
Distinguished Minority Lecture-ships	30,000	
Stengthening Existing Programs to Accomplish Professional Accreditation	298,000	
Recruitment Expansion and Commuting Buses	102,000	
Developing New Programs	113,000	
Cooperative Programs	25,000	
Faculty Exchange Programs	20,000	
Delta State University		$185,000
Minority Graduate Assistant Fellowships	$ 35,000	
Cooperative Programs	25,000	
Distinguished Minority Lecture-ships	30,000	
Faculty Exchange Programs	10,000	
Student Assistance in Remedial Programs	61,500	
Special Counselors and Minority Recruitment	23,500	

TABLE IV-A—Continued

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING PROPOSED USE OF SPECIAL LEGISLATIVE APPROPRIATION OF $2,998,650

Jackson State University		$600,000
Minority Graduate Assistants Fellowships	$ 35,000	
Cooperative Programs	25,000	
Distinguished Minority Lectureships	30,000	
Developing New Programs	150,000	
Minority Recruitment and Student Services	76,000	
Strengthening Existing Programs	274,000	
Faculty Exchange Programs	10,000	
Mississippi State University		$185,000
Minority Graduate Assistant Fellowships	$80,000	
Distinguished Minority Lectureships	60,000	
Cooperative Programs	25,000	
Faculty Exchange Programs	20,000	
Mississippi University for Women		$185,000
Minority Graduate Assistant Fellowships	$ 35,000	
Cooperative Programs	25,000	
Distinguished Minority Lectureships	30,000	
Faculty Exchange Programs	10,000	
Compensatory Instructional Programs	65,000	
Minority Counseling and Recruitment	20,000	

TABLE IV-A—Continued

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING PROPOSED USE OF SPECIAL LEGISLATIVE APPROPRIATION OF $2,998,650

Mississippi Valley State University		$700,000
Faculty Improvement Through Sabbatical Leaves (14)	$112,000	
Faculty Exchange Programs	10,000	
Cooperative Programs	25,000	
Distinguished Minority Lectureships	$ 30,000	
Minority Recruitment, Admission, and Counseling	52,688	
Developing New Programs	114,000	
Strengthening Existing Programs to Accomplish Professional Accreditation	356,312	
University of Mississippi		$185,000
Minority Graduate Assistant Fellowships	$ 80,000	
Distinguished Minority Lectureships	60,000	
Cooperative Programs	25,000	
Faculty Exchange Programs	20,000	
University of Mississippi Medical Center		$ 73,650
Cooperative Programs	25,000	
Student Services	48,650	
University of Southern Mississippi		$185,000
Minority Graduate Assistant Fellowships	$ 80,000	
Distinguished Minority Lectureships	60,000	
Cooperative Programs	25,000	
Faculty Exchange Programs	20,000	

TABLE V

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING, STATE OF MISSISSIPPI

APPROPRIATION PER STUDENT CREDIT HOUR OF PRODUCTION FOR THE 4-YEAR PERIOD 1970-71, 1971-72, 1972-73, 1973-74

Institutions	*Lower* (1)	*Upper* (2)	*Graduate* (3)
Alcorn State University . .	$20.85	$47.43	$ —
Delta State University . . .	21.08	47.76	130.73
Jackson State University .	22.75	44.21	126.10
Mississippi State			
University	20.25	43.61	148.28
Miss. University for			
Women	36.18	47.66	146.95
Miss. Valley State			
University	20.45	61.16	—
University of Mississippi .	19.20	46.94	99.80
Univ. of Sou. Miss.	21.49	41.34	113.48

TABLE V-A

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

STUDENT CREDIT HOUR PRODUCTION AND STATE APPROPRIATIONS FOR THE 4-YEAR PERIOD 1970-71, 1971-72, 1972-73, 1973-74

	Student Credit Hours				State Appropriations			
Institution	Lower Level	Upper Level	Graduate Level	Total SCH	Lower Level	Upper Level	Graduate Level	Total Appropriation
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Alcorn State U.	188,113	116,413	–	304,526	$ 3,921,401	$ 5,521,384	$ –	$ 9,442,785
Delta State U.	137,821	144,338	19,446	301,605	2,904,967	6,893,824	2,542,260	12,341,051
Jackson State U.	329,049	200,864	27,288	557,201	7,484,356	8,879,561	3,441,077	19,804,994
Miss. State U.	526,806	456,657	73,068	1,056,531	10,666,919	19,913,791	10,834,214	41,414,924
Miss. U. for Women	153,710	101,923	8,260	263,893	5,561,616	4,246,509	1,213,834	11,021,959
Miss. Valley State U.	184,173	83,771	–	267,944	3,766,041	5,123,669	–	8,889,710
Univ. of Miss.	433,773	274,237	143,331	851,341	8,368,713	12,872,388	14,304,424	35,545,525
Univ. of Sou. Miss.	406,446	462,592	81,533	940,570	8,735,917	18,711,771	9,252,744	36,700,432
TOTALS	2,359,890	1,830,795	352,926	4,543,611	$51,409,930	$82,162,897	$41,588,553	$175,161,380

TABLE VI

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
STATE APPROPRIATIONS FOR NEW CONSTRUCTION AT
STATE-SUPPORTED UNIVERSITIES – 1966-1974

Institution	*Totals*	*1966-68*	*1968-70*	*1970*	*1971*	*1972*	*1973*	*1974*
Alcorn State University	$ 16,084,656	$ 1,480,000	$ 100,450	$ 4,300,000	$ 5,500,000	$ 600,000	$ 510,000	$ 3,594,206
Delta State University	11,417,960	1,400,000	650,000	1,362,000	1,718,000	0	146,000	6,141,960
Jackson State University	17,691,557	1,400,000	0	1,702,500	5,597,500	700,000	150,000	8,141,557
Mississippi State University	13,989,528	2,250,000	0	2,725,000	3,445,000	0	1,750,000	3,819,528
Mississippi University for Women	9,705,574	1,500,000	0	1,130,000	1,680,000	0	2,263,000	3,132,574
Mississippi Valley State University	10,668,514	1,400,000	1,500,000	1,200,000	4,100,000	700,000	40,000	1,728,514
University of Mississippi	17,206,793	2,163,000	0	851,500	2,985,000	0	537,000	10,670,293
University of Southern Mississippi	12,412,978	2,175,600	0	647,000	2,303,000	0	3,117,880	4,170,098
TOTALS	$109,177,560	$13,768,000	$2,250,450	$13,913,000	$27,328,500	$2,000,000	$8,513,880	$41,398,730

TABLE VI-A

PHYSICAL FACILITY PROJECTS APPROVED BY THE BOARD OF TRUSTEES FOR WHICH FUNDS WILL BE REQUESTED FROM THE LEGISLATURE DURING THE PERIOD OF THE PLAN

No.	*Alcorn State University*	*No.*	*Delta State University*	*No.*	*Jackson State University*	*No.*	*Mississippi State University*
1	Classroom Building	1	Complete Renovation of Bailey Hall Old Science Building	1	New Men's Dormitory	1	Renovation of Lee Hall
2	Mechanical Arts Building	2	Instructional and Classroom Facility Physical Education	2	Assembly Building	2	Circumferential Road
3	Stadium and Track	3	Annex to and Renovation of Fielding L. Wright Art Center	4	Warehouse and Maintenance Building	3	Utilities Renovation (Phase II)
4	President's Home	4	Purchase of Certain Houses and Lots Adjacent to Campus	4	Warehouse and Maintenance Building	4	Fine Arts Building
5	Warehouse and Motor Pool	5	Addition and Renovation of Zeigel Hall – Music Building	5	Business and Economics Building	5	Addition to Union
6	Faculty Housing	6	Expansion of Library	6	Addition to Health Center		
7	Streets, Sidewalks, Curbs & Gutters	7	Home Management Facility – Home	7	Major Street Improvements and Drainage		
8	Addition to the Fine Arts Building	6	Administration Building	8	Football Stadium and Track		

TABLE VI-A – Continued

PHYSICAL FACILITY PROJECTS APPROVED BY THE BOARD OF TRUSTEES FOR WHICH FUNDS WILL BE REQUESTED FROM THE LEGISLATURE DURING THE PERIOD OF THE PLAN

No.	*Alcorn State University*
9	Parking Lots
10	Addition to Agricultural Science Building
11	Development of Mobile Home Park
12	Development of Outdoor Recreation Areas
13	Restoration of Belles Lettres Hall
14	Restoration and Air-Conditioning of Oakland Chapel

No.	*Delta State University*
9	School of Business Facility
10	Laundry

No.	*Jackson State University*
9	New Women's Dormitory
10	Additional to Student Union
11	Speech and Theatre

No.	*Mississippi State University*

TABLE VI-A – (Continued)

PHYSICAL FACILITY PROJECTS APPROVED BY THE BOARD OF TRUSTEES FOR WHICH FUNDS WILL BE REQUESTED FROM THE LEGISLATURE DURING THE PERIOD OF THE PLAN

No.	*Mississippi Univ. for Women*
1	Purchase Additional Land
2	Addition to Library including Library Science Department
3	General Classroom Building
4	Addition to Fine Arts Building
5	School of Nursing Infirmary Building
6	Addition to Student Center
7	Administration Building Extension
8	Fashion Institute
9	Continuation Center
10	Warehouse
11	Parking Garage

No.	*Mississippi Valley State Univ.*
1	Renovation of College Laundry
2	Alteration and Expansion of Cafeteria
3	Renovation of Old Faculty Apartments
4	Humanities Building

No.	*University of Mississippi*
1	Health and Physical Education Center
2	Dormitory Renovatios
3	Streets and Grounds Improvement
4	Completion of Library (Third Floor)
5	Science Center Phase – V, Classrooms, Science Library
6	New Power Plant – Phase I
7	Administration Building
8	Water System – Phase I
9	Cultural Center – Phase II

No.	*Univ. of Southern Mississippi*
1	Industrial-Vocational Education and Science Technology Building
2	Purchase of Property
3	General Purpose Academic Facility
4	Physical Plant Facility
5	Additional Space for College of Education and Psychology
6	Campus Security Facility
7	Alumni Headquarters
8	Physical Education Facility

ALCORN STATE UNIVERSITY
CENTER FOR INTER-CULTURAL STUDY:
A PROPOSAL

APPROVED BY THE
BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

OBJECTIVES:

I. Creation of a teaching and research capability in several disciplines which will further understanding of how different cultures, and different elements within a single culture, interact with one another in constructive and destructive ways.

II. Utilization of Alcorn's specific geographic and cultural situation to provide field experience in intercultural study.

III. Introduction of other race and other culture students to Alcorn to create an intercultural situation on the campus.

STRATEGIES

I. First year (1974–1975)

A. Establishment of a special residential unit on the campus to house the students and staff of the Center for Inter-Cultural Study.

B. Recruitment of students in approximately equal numbers from:

1. the regular Alcorn student body
2. urban colleges and universities across the nation on a semester basis as cultural exchange students

C. Establishment of a curricular model which would:

1. allow students to enroll in coursework at Alcorn
2. provide special seminars in various aspects of inter-cultural study, especially as it relates to Claiborne and Jefferson counties
3. provide opportunities for directed field experience in a variety of occupations and fields in the local communities.
4. require students to develop their own personal skills at inter-cultural relations through experience in self-government within the residential unit

D. Recruitment of faculty, on a released time basis, from departments of Social Science, Language and Literature, and Fine Arts to develop and deliver the special seminars and to direct students' field experience.

E. Recruit professional residential staff to assist in the ongoing instructional activities of the residential unit.

II. Second year (1975–1976)

A. Continuation of existing residential program.

B. Recruitment of additional faculty for the participating departments to strengthen the college's offerings in the area of inter-cultural study.

C. Plan for the implementation of third year programs.

III. Third year (1976–1977)

A. Continuation of existing residential program.

B. Creation of three interdisciplinary programs in the area of inter-cultural study leading to the Master of Arts degree in

1. Human relations
   a. a pre-professional and in-service masters program to prepare students for career in human relations, community contact, and personnel work with government and private agencies and with industry.
   b. the curriculum would draw work and field experience in the areas of social science, psychology, business, and language and literature
2. Socio-linguistics
   a. a masters program designed to prepare students for work in multi-language and/or multi-dialect situations by fostering an understanding of language as a culture-bound and cultural-carrying social phenomenon
   b. the curriculum would draw together course work and field experience in the areas of language and literature, social science, psychology, and fine arts
3. Cultural anthropology
   a. a masters program designed to prepare some students for further study and eventual teaching in the field, and to prepare others for work in developing countries or regions with greater understanding of and respect for the local institutions.
   b. the curriculum would draw together coursework and field experience in the areas of social science, language and literature, psychology, fine arts.

COST ESTIMATES

I. First year (1974–1975)

A.	Renovation of existing faculty for use as residential unit	No estimate
B.	Released time from summer teaching for faculty to plan Center curricular	$8,000
C.	Promotion and recruitment	$ 5,000
D.	Special financial aid	20,000
E.	Instructional and office supplies and expenses	6,000
F.	Vehicles for local transportation of students (3 vehicles, cost prorated over 3 years)	8,000
G.	Faculty salaries (based on 5 faculty at 3/5 time, or 3 F.T.E. faculty)	42,000
H.	Residential staff salaries	15,000
I.	Secretarial salaries (1 1/2 F.T.E.)	9,000
	TOTAL	$113,000 + building renovation

II. Second year (1975–1976)

A.	Continuing expenses from 1st year	$113,000
B.	Salaries for additional faculty (5 faculty @ $14,000)	70,000
	TOTAL	$183,000

III. Third year (1976–1977)

A.	Continuing expenses from 2nd year	$183,000
B.	Graduate fellowships (10 @ $3,000)	30,000
	TOTAL	$213,000

IV. Total cost for 1st 3 years

A.	First year	$113,000

B.	Second year	183,000
C.	Third year	213,000
	TOTAL	$509,000

ENROLLMENT ESTIMATES

I.	First year	
	A. Regular Alcorn students	40
	B. Other race students	40
II.	Second year	
	A. Regular Alcorn student	40
	B. Other race students	40
III.	Third year	
	A. Regular Alcorn students	50
	B. Other race students	60

UNITED STATES' EXHIBIT 2

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

[LOGO OMITTED]

MIKE [illegible] BRISTER, President
[illegible] 1974
MEMBERS
BOBBY L. CHAIN, Hattiesburg 39401
R. C. COOK, Hattiesburg 39401
ROSS E. FRANKS, [illegible] 38732
P. W. HARRISON, D.D.S., Yazoo City 39194
M. PAUL HAYNES, Belzoni 38824
VERNER S. HOLMES, M.D., [illegible] 39648
W. M. SHOEMAKER, Vice President
Meridian 39301
MEMBERS
DRAYTON PARKER, Dove 35747
MIRIAM O. SIMMONS, Columbus 39429
ROSWELL STEVENS, Macon 39341
MIKE P. STURDIVANT, Grandview 39328
THOMAS N. TURNER, Belzoni 39038

E. E. THOMAS, Executive Secretary and Director
6355 EASTOVER DRIVE
P.O. BOX 2336
JACKSON, MISSISSIPPI 39205
(601) 982-6611

June 14, 1974

Mr. Peter Holmes, Director
Office for Civil Rights
Department of Health, Education, and Welfare
Washington, D. C. 20201

Dear Mr. Holmes:

In regard to your telephone conversation with our office on June 11, 1974, we are submitting the following five statements that are supplements to the Plan of Compliance as modified and delivered to you on May 29, 1974:

1. *Alternate Plan*

   Should the proposed Plan of Compliance or any part thereof fail to be implemented as scheduled, the Board of Trustees of State Institutions of Higher Learning will, to the best of its ability, develop and implement an alternate plan of action that addresses itself to the desegregation of the state institutions of higher learning.

2. *Impact Studies*

During the life of the Plan, the Board of Trustees will make studies that will provide a determination of the impact on desegregation of any actions altering the following areas of operations of the various institutions: academic programs, physical facilities, locations of branches, and/or new institutions, and the modification of admission standards. The Board will not approve actions in the above listed areas that will, in the opinion of the Board, impede desegregation unless other actions are approved that will have an offsetting net effect on the desegregation process. The impact studies will be included in the reporting schedule to HEW.

3. *Reporting Process*

To the extent that any item or proposal in the Plan needs clarification as to its purpose, initiation or completion timetable, such clarification will be provided.

4. *Resources*

To the extent that information provided in this Plan does not satisfactorily respond to the information called for in Section II-B, Resources, of the memorandum attached to HEW's April 18, 1974 letter to Mr. Thomas N. Turner, additional information will be provided to HEW upon request.

By March 1, 1975 the Board of Trustees will have completed additional in-depth analyses of the resources made available to the various institutions of higher learning under their governance. Should any disparities be found in resources allocated by the Board between the three predominantly black institutions and their comparable predominantly white

counterparts, the Board will eliminate any such inequalities at the earliest feasible time with the target date being no later than July 1, 1978.

5. *Role of Institutions and Duplicative Curricula*

During the coming year, the Board of Trustees will evaluate the role of each of the four-year institutions to determine whether the roles, in the opinion of the Board, are attractive to "other race" students. Special attention will be given to the roles of the predominantly black universities in determining whether or not they can reasonably be expected to attract significant numbers of white students.

Particular attention will be given to differentiated roles of historically black and white institutions that are in geographical proximity to each other.

In the absence of roles at the predominantly black universities that will fail, in the opinion of the Board, to attract significant numbers of white students, the Board will modify the roles to meet the criteria established by the Board that will improve the attractiveness to white students. In this connection, the Board will determine, to the best of its ability the extent, if any, to which existing duplication of non-core (specialized) curricula offerings among each of the universities impedes desegregation. The Board will provide a report by October 1, 1974, indicating definitions of "core" (basic) and "non-core" (specialized) curricula.

By June 30, 1975, the Board will provide a report to HEW that includes the information called for above and (1) a determination of the areas of study at various public higher education institutions where unnecessary duplication of non-core curricula, if any, exists that impedes the desegregation

process; and (2) decisions as to ways in which any such unnecessary duplication will be eliminated; and (3) the development of a timetable for the accomplishment of such elimination.

Further, the Board resolves that new curricula will be awarded to institutions under their jurisdictions in a manner that does not perpetuate competition for students by predominantly black and predominantly white institutions based upon unnecessary duplication of curricula offerings.

We have done our best to respond to the concerns expressed to us in your memorandum dated April 18, 1974.

Sincerely yours,

/s/ MILTON E. BRISTER
Milton E. Brister
President

MEB:wp

UNITED STATES' EXHIBIT 8

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MISSISSIPPI

POLICY FOR OFF-CAMPUS EXTENSION COURSES FOR ACADEMIC CREDIT

Approved by the Board of Trustees on January 18, 1979

1. An advisory committee for off-campus degree credit extension programs shall be established and will be composed of one representative from each state university under the control of the Board of Trustees of State Institutions of Higher Learning. The committee will be advisory to the Presidents Council and will serve to (a) formulate recommendations for off-campus extension courses, (b) develop guidelines for extension classes for academic credit that eliminate needless duplication, (c) provide for communication and exchange of information between institutions engaged in off-campus credit activities, (d) advise the Presidents Council with regard to policies and procedures governing off-campus extension classes for credit, (e) advise the Presidents Council regarding Southern Association of Colleges and Schools' accreditation standards for off-campus extension classes for academic credit.

2. No institution operating under the jurisdiction of the Board of Trustees of State Institutions of Higher Learning will render education services carrying academic degree credit to a constituency in a location that is within a 50-mile radius of another state university's home campus, Board approved center, or

regional campus, without the approval of the Board of Trustees. In those instances where a proposed location is within 50 miles of another institution's campus, Board approved center, or regional campus but is nearer to the home campus of the institution originating the activity, the 50-mile rule shall not be applicable.* Under no circumstances will the 50-mile limit be permitted to restrict the credit offerings of other institutions when the institution in the area cannot or does not elect to provide the needed service.

*Example: Delta State University could set up an extension class when the location is closer to its own campus than to the Mississippi Valley State University campus. Mississippi State University could set up an extension class when the location is closer to the Starkville campus than to the Ole Miss campus even though the class's location is within the 50-mile distance from Ole Miss.

3. Board approved degree credit and resident centers will not be permitted to organize degree credit activities beyond the boundaries of their established campus or facilities. All off-campus extension classes operating at locations other than centers and regional campuses must be administered and reported by the main campus of the institution involved.

4. Academic programs that exist only in some institutions may be operated statewide in established centers and in off-campus extension classes after approval by the Board of Trustees. These are programs such as Law, Pharmacy, Engineering, Nursing, and Graduate Social Work. A list of these programs shall be prepared and approved by the Board of Trustees.

5. There are academic programs which need to operate statewide. They may be supported by grants and are to be available throughout the state. Before submitting an application for any such grants, approval must be given by the Board of Trustees.

6. The Board of Trustees is recognized as the governing authority for off-campus activities, and all matters considered by the Advisory Committee are subject to review and approval by the Presidents Council and the Board of Trustees.

OFF CAMPUS
ACADEMIC CREDIT
RESPONSIBILITY AREAS

[Map omitted]

UNITED STATES' EXHIBIT 11

BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING

3825 Ridgewood Road
P.O. Box 2336
Office of the JACKSON, MISSISSIPPI 39205
Executive Secretary and Director (601) 982-6611

April 26, 1978

Dr. John A. Peoples, Jr., President
Jackson State University
Jackson, Mississippi 39217

Dear Mr. Peoples:

In the latest Board of Trustees meeting, I gave the members a report relative to the operation of the Universities Center program in Jackson and the Plan of Compliance. Previously, a meeting was held to review the Center's program with Dr. Estus Smith, the Chief academic officers and the continuing education directors at Mississippi State University, the University of Mississippi, and the University of Southern Mississippi. All indicated a willingness to continue working together in meeting the requirements of the Plan of Compliance.

It is my understanding that courses presently approved for the Universities Center are not the same as those offered by Jackson State University. Furthermore, if and when Jackson State University

> . . . determines sufficient demand for new programs on its campus, the Board of Trustees will give priority to Jackson State University over the Universities Center in approving new programs. Even though other universities may have been authorized to offer courses for part-time study at the Universities Center, when and if Jackson State desires and requests with

sufficient justification the approval of these same courses, the Board will give Jackson State priority in offering the courses if they fall within the accepted role and scope assignment to Jackson State University.

We are therefore suggesting that if Jackson State University desires to offer the same courses as those currently approved for the Universities Center, you must request approval by the Board of Trustees to offer the same courses at Jackson State University. It is incumbent on Jackson State University to abide by the 1974 Plan of Compliance just as it is necessary for the other universities operating programs in the Universities Center to refrain from offering courses that are known to be offered at Jackson State University.

I know you will be pleased to work with all of us in complying with the Board of Trustees' intent as stated in the Plan of Compliance.

Sincerely yours,

/s/ E. E. THRASH

E. E. Thrash
Executive Secretary and Director

CQC:pk

cc: Members of the Board of Trustees
of State Institutions of Higher
Learning

UNITED STATES' EXHIBIT 12

July 15, 1976

Dr. John A. Peoples, Jr., President
Jackson State University
Jackson, Mississippi 39217

Dear Mr. Peoples:

I am calling your attention to the statement in our Compliance Plan (page 22) that pertains to Jackson State offering new courses on its campus to-wit: even though other universities may have been authorized to offer courses for part-time study at the Universities Center, when and if Jackson State University desires and requests with sufficient justification the approval of these same courses, the Board will give Jackson State priority in offering the courses if they fall within the accepted role and scope assignment to Jackson State University. This means that you must receive approval of the Board of Trustees before courses already approved for the Universities Center are offered at Jackson State University.

The Board of Trustees in its meeting of July 15, 1976, has instructed Jackson State University to follow the Plan of Compliance on new offerings that are presently available at the Universities Center. When Jackson State University desires to initiate any course that is a duplicate of a course offered at the Universities Center, the course must be approved by the Board prior to implementation. Duplicate courses presently listed in the Jackson State University catalog which have not been approved by the Board must be deleted, and students are not to be enrolled until the courses have been approved by the Board.

Presently, we have a list of courses approved for the three (3) universities that offer programs at the Universities

Center, Jackson, Mississippi. It has been noted that Jackson State University, in its latest undergraduate catalog and proposed garduate catalog, has listed several new courses that are in conflict with courses already approved for the Universities Center.

Therefore, I am requesting that you have the proper officials meet with our staff (Dr. Coffman and Dr. Meredith) to review the list of courses approved for the Universities Center and determine whether or not Jackson State University will seek approval of the new Jackson State University courses that are in conflict with the Universities Center courses.

It is essential that this matter be handled at an early date. Therefore, we are suggesting that a meeting for this purpose be arranged prior to July 23, 1976.

Please call if you need further details relative to this matter.

Sincerely yours,

/s/ E. E. THRASH

E. E. Thrash
Executive Secretary and Director

CQC:pp

cc: Dr. R. C. Cook
Mr. Boswell Stevens
Mr. Milton E. Brister

MISSISSIPPI STATE UNIVERSITY
JACKSON BRANCH

Proposed Courses
Fall 1976

COLLEGE OF ARTS AND SCIENCES

Anthropology

AN	6143	Cultural Change
AN	4153/6153	Culture and Personality
AN	6123	Theory in Cultural Anthropology
AN	4313/6313	Medical Anthropology
AN	4703/6703	Peoples of Africa
AN	4813/6813	North American Indians
AN	4823/6823	South American Indians
AN	5314/7314	The Ascent of Man

Archaeology

AR	4523/6523	North American Archaeology
AR	4543/6543	Archaeology of Southeastern United States
AR	4563/6563	Archaeology of MesoAmerica

Art

ART	2113	Modern Art History
ART	2103	Photography for the Graphic Artist
ART	3313	Commercial Art I

Communication

CO	2213	Small Group Communication
CO	3113	Editorial Writing
CO	3123	Feature Writing
CO	3143	Advanced News Writing and Reporting
CO	4213/6213	Political Communication
CO	6253	Elements of Persuasion

English

EN	4333/6333	Literature of the South
EN	6413	History of the English Language
EN	4423/6423	Modern Criticism
EN	4523/6523	Chaucer
EN	6533	Milton
EN	6653	English Novel 1870 to Present
EN	4733/6733	18th Century Prose and Poetry
EN	4803/6803	Types of Contemporary Drama
EN	4823/6823	Contemporary Poetry
EN	8623	Seminar in English Literature: 1785 to 1832
EN	8843	Seminar in American Literature: 1914 to Present

Geology

GG	4503/6503	Geomorphology
GG	4603/6603	Engineering Geology
GG	4613/6613	Introduction to Ground Water Geology

Geography

GR	4243/6243	Geography of the Soviet Union
GR	6123	Urban Geography
GR	6303	Political Geography
GR	6603	Climatology

History

HI	4543	Europe Since 1939
HI	4173/6173	U. S. History Since 1939
HI	4223/6223	American Constitutional History
HI	4233/6233	American Military History
HI	4303/6303	The Old South
HI	4313/6313	The New South
HI	4323/6323	The American West
HI	4763/6763	History of Modern Germany
HI	6103	Colonial America

History (cont'd)

HI	6113	U. S. History 1783–1825
HI	6123	U. S. History 1825–1850
HI	6133	U. S. History 1850–1877
HI	6153	U. S. History 1877–1917
HI	6163	U. S. History 1917–1939
HI	6203	Diplomatic History of the United States
HI	6263	American Economic Development
HI	6403	Ancient Near East
HI	6413	Ancient Greece and Rome
HI	6733	Constitutional and Legal History of England
HI	6753	History of Russia

Mathematics

MA	2453	Foundations of Mathematics
MA	6813	Introduction to Mathematical Statistics
MA	6823	Introduction to Probability
MA	7323	Numerical Analysis II
MA	8553	Fundamentals of Geometry for Secondary Teachers
MA	8563	Theory of Equations for Secondary Teachers
MA	8573	Secondary School Math from an Advanced Viewpoint

Physics

PH	4613/6613	Introduction to Nuclear Physics
PH	5023/7023	Astronomy for Teachers
PH	7013	Selected Topics in Physics for Teachers

Philosophy and Religion

PR	3113	Introduction to Greek Philosophy
PR	3203	Metaphysics, Mysticism, and Parapsychology
PR	4113/6113	Medieval and Modern Philosophy

Philosophy and Religion (cont'd)

PR	4143/6143	Philosophy of Science
PR	5213/7213	Contemporary Philosophy
PR	7203	Philosophy of Religion

Political Science

PS	4253	Southern Politics
PS	4383/6383	National Security Policy
PS	4453/6453	Empirical Political Theory
PS	4913/6913	Comparative Public Policy
PS	4923/6923	Comparative Development Administration

Psychology

PSY	4353/6353	Motivation
PSY	4613/6613	Social Intervention
PSY	4523/6523	Industrial Psychology
PSY	6103	Psychometrics
PSY	6403	Physiological Psychology
PSY	6623	Social Psychology
PSY	8223	Systems & Theories of Psychology
PSY	8323	Abnormal Psychology
PSY	8343	Clinical Psychology
PSY	8363	Personality Appraisal
PSY	8373	Systems of Psychotherapy
PSY	8383	Behavior Therapy
PSY	8503	Learning
PSY	8523	Memory and Verbal Learning
PSY	8543	Community Mental Health

Microbiology

MIC	1123	Science of Public Health

Sociology

SO	3913	Industrial Sociology
SO	4513/6513	Correctional Systems

Sociology (cont'd)

SO	6203	The Family in the United States
SO	6703	Population
SO	7403	Aging and Retirement in American Society

COLLEGE OF EDUCATION

Adult Education

ADE	5213/7213	Adult Education for the Aging
ADE	8213	Paraprofessionals in Adult Education
ADE	8243	Research and Evaluation in Adult Education
ADE	8313	Program Development Process in Adult Education
ADE	8373	Seminar in Adult Education

Educational Administration

EDA	8183	Public Relations in School Administration
EDA	8233	School Survey and Plant
EDA	8343	School Personnel Administration

Business Education

BED	4103	Philosophy of Vocational Business Education
BED	6213	Teaching of Basic Business Subjects
BED	8193	Improvement of Theory and Techniques in Teaching Clerical and Secretarial Procedures
BED	8303	Problems in Business Education
BED	8323	Coordination of Cooperative Programs in Vocational Business Education

Community College Education

CED	8113	History and Philosophy of the Community College
CED	8413	Community College Teaching

Elementary Education

EDE 4453/6453		Introduction to Early Childhood Education
EDE 5453		Modern Concepts & Methods of Teaching Math in Elementary and Junior High Schools
EDE	6433	Language Arts
EDE	6443	Social Studies in the Elementary School
EDE	8423	Elementary School Methods
EDE	8443	Seminar in Elementary Education
EDE	8473	Elementary Social Studies Curriculum
EDE	8483	Teaching Physical Science in the Elementary School
EDE	8493	Teaching Biological Science in the Elementary Schol
EDE	8513	Curriculum & Program Development in Early Childhood Education
EDE	8523	Language Arts & Reading Readiness Experiences in Early Childhood Education
EDE	8533	Behavioral Experiences in Early Childhood Education
EDE 8543		Math Experiences in Early Childhood Education
EDE 8593		Issues and Innovations in Reading

Foundations of Education

EDF 4313/6313	Creative Art in the Elementary and Secondary Schools
EDF 5323/7323	Audio-Visual Methods
EDF 5333/7333	Systems of Individualized Instruction
EDF 5353/7353	Improvement of Theory & Techniques in Teaching Art
EDF 5363/7363	Workshop: Alcohol and Drug Education

Foundations of Education (cont'd)

EDF 5363/7363	Workshop: Student Activities in the Secondary School
EDF 5363	Workshop: Teaching Reading Through Language Experiences
EDF 7363	Workshop: Classroom Behavior Management
EDF 8333	Education and Society
EDF 8343	World History of Education
EDF 8353	Principles of Curriculum Development
EDF 8373	Educational Research Design
EDF 8383	Issues in Education
EDF 8413	Application and Evaluation of Career Education Concepts in K-12 Curriculum

Secondary Education

EDS 4613/6613	High School Journalism
EDS 4603/6603	Supervising High School Publications
EDS 6503	Teaching of Speech
EDS 7623	Teaching of Foreign Language
EDS 7633	Teaching of Mathematics
EDS 7643	Teaching of Social Studies
EDS 7653	Teaching of Science
EDS 8613	Secondary School Curriculum
EDS 8623	The Junior High School
EDS 8633	Problems of Secondary Education
EDS 8713	Curriculum Adjustments
EDS 8723	Emerging Theories of Instruction

Special Education

EDX 5713	Psychology and Education of Exceptional Children and Youth
EDX 5733	Teaching the Severely Retarded Child
EDX 5753/7753	Curriculum for the Educable Mentally Retarded
EDX 5763/7763	Materials & Complement Methods of Teaching the Educable Mentally Retarded

Special Education (cont'd)

EDX 5773/7773	Teaching the Disadvantaged Child
EDX 5783/7783	Curriculum Adaptation for Teaching Handicapped Youth of Secondary Age
EDX 5793/7793	Methods & Materials for Teaching the Child with Learning Disabilities
EDX 8353	Teaching Strategies for the Gifted
EDX 8723	Children & Youth with Multiple Disabilities
EDX 8733	Seminar on Problems Common to Exceptional Children and Youth
EDX 8763	Organization and Administration of Special Education
EDX 8813	Teaching the Emotionally Disturbed Child

Educational Psychology

EPY 4073/6073	Personality Adjustment of the School Child
EPY 4133/6133	Application of Learning Theories in the Classroom
EPY 6313	Measurement and Evaluation
EPY 8243	Psychology of the Gifted
EPY 8333	Psychological Foundations of Education
EPY 8453	School Psychological Services

Student Personnel and Counselor Education

GED 4113/6113	Guidance Services and Mental Health
GED 4120/6120	Seminar: Transactional Analysis in the Classroom
GED 4533/6533	History, Philosophy, and Trends in Employment Service
GED 4603/6603	Techniques of Teaching and Administering Occupational Orientation
GED 8103	Study of the Individual

Student Personnal and Counselor Education (cont'd)

GED 8163	Advanced Counseling Theory
GED 8173	Guidance for the Gifted
GED 8233	Job Development and Worker Mobility
GED 8273	Philosophy of Student Housing in Higher Education
GED 8343	Guidance Services for the Disadvantaged
GED 8413	Practices and Processes of Rehabilitation Facilities
GED 8423	Vocational Rehabilitation Counseling
GED 8433	History, Philosophy, and Trends in Vocational Rehabilitation
GED 8443	Medical Information for Rehabilitation Counselors
GED 8483	Vocational Rehabilitation of the Public Offender
GED 8513	Seminar in Student Personnel in Higher Education
GED 8523	Employment Service Counseling
GED 8813	Psychological Effects of Disability
GED 8853	Supervising and Coordinating Counseling and Other Guidance Services

Industrial Education

IED 3003	Curriculum Development in Vocational Technical Education
IED 3033	Principles and Methods in Shop Teaching
IED 3063	Vocational Psychology
IED 4123/6123	Safety in Shop Management
DED 4133/6133	Methods and Materials in Teaching Distribution Education
IED 4183/6183	Coordination of Part-time Education
IED 4243/6243	Teaching the Art Crafts

Industrial Education (cont'd)

IED	4343/6343	Metrics for Education and Industry
IED	8263	Philosophy and Administration of Vocational Education
IED	8273	Seminar in Occupational Orientation
IED	8283	Public Relations in Vocational Education
IED	8363	Modern Trends and Techniques in Distributive Education
IED	8373	Curriculum Development in Distributive Education

Music Education

MUE	8923	School Music Curriculum
MU	8343	Music of the United States
MU	8813	Advanced Harmonic Techniques

COLLEGE OF BUSINESS AND INDUSTRY

Economics

EC	4423	Problems in State and Local Finance
EC	5223	Labor Law and Legislation

Finance

FIN	3333	Estate Planning
FIN	3353	Real Estate Finance

Insurance

INS	3123	Property and Casualty Insurance

Management

MGT	4233	Advanced Personnel Administration
MGT	5243	Wage and Salary Administration

Marketing

MKT	5133	Advertising Management

COLLEGE OF AGRICULTURE

Agricultural Economics

AEC	4613/6613	Advanced Agricultural Marketing
AEE	3203	Introduction to Communications in Agricultural and Extension Education
AEE	8263	Public Relations in Agricultural and Extension Education
AEE	8703	Evaluation of Agricultural and Extension Education Programs

Agronomy

AGN	5103/7103	Plant Breeding
AGN	5113/7113	Turf Management
AGN	8103	Pasture Development

Animal Science

ASC	3232	Horse Science
ASC	4233/6233	Livestock Marketing
ASC	4313/6313	Nutrition I
ASC	4323/6323	Beef Cattle Science
ASC	8423	Meat Science

Dairy Science

DS	5413/7413	Nutrition II
DS	5613/7613	Physiology of Reproduction

Entomology

ENT	4234/6234	Field Crop Insects

Home Economics

HE	3213	Individual and Family Nutrition
HE	6303	Consumer Economics

Horticulture

HO	2123	Home Horticulture (Ornamental)
HO	2343	Floral Design
HO	2413	Vegetable Production (Home Gardening)

UNIVERSITY OF MISSISSIPPI
JACKSON BRANCH

Proposed Courses
Fall 1976

SCHOOL OF BUSINESS ADMINISTRATION

Accountancy

ACCY	301	Administrative Accounting
ACCY	307	Governmental Accounting
ACCY	310	Systems
ACCY	404	Accounting Theory
* ACCY	504	Standard Costs
* ACCY	509	Advanced Income Taxes
* ACCY	515	C. P. A. Review

Business Education

BED	622	Supervision of Business Education

Economics and Finance

Economics

ECON	305	Current Economic Topics
ECON	323	Introduction of Manpower Economics
ECON	403	Intermediate Microeconomics
ECON	505	Public Finance
* ECON	515	Methods of Statistical Analysis
* ECON	522	Economic Growth and Development

Finance

FIN	339	Personal Finance
FIN	443	Cases in Life Insurance

* Graduate students only.

Finance (cont'd)

* FIN	533	Security Analysis and Portfolio Management
FIN	537	Bank Management I

Management and Marketing

Management

MGMT	372	Operations Management I
MGMT	493	Administrative Processes
MGMT	577	Operations Planning and Control
MGMT	584	Industrial Relations
* MGMT	586	Managerial Organization and Policy

Marketing

MKTG	358	Industrial Marketing
MKTG	361	Introduction to Retailing
MKTG	451	Marketing Policy and Strategy
MKTG	553	Advanced Marketing
MKTG	565	Advanced Advertising
* MKTG	567	Consumer and Market Behavior

SCHOOL OF EDUCATION

Educational Administration and Foundations of Education

Educational Administration

EDAD	621	School Business Administration
EDAD	721	Systems Analysis in Educational Administration

Foundations of Education

EDFD	521	Recent Developments in Educational Practice
EDFD	523	Group Study of Problems in School Systems

* Graduate students only.

Educational Research and Statistics

**	EDRS	501	Elementary Statistics in Education
	EDRS	557	Computers and Education
**	EDRS	705	Research Design and Methodology
	EDRS	710	Design of Experiments

Elementary Education

Early Childhood Education

	EDEC	551	Seminar: Science and Number Concepts in Early Childhood Education
	EDEC	553	Seminar: Language Concepts and Literature in Early Childhood Education
	EDEC	557	Seminar: Social Living in Early Childhood Education

Elementary Education

	EDEL	519	Techniques and Principles for Elementary Classroom Management
	EDEL	529	The Elementary School Child
	EDEL	629	Clinical and Diagnostic Procedures in Arithmetic

Reading

	EDRD	417	Evaluation Techniques for Reading Abilities
	EDRD	516	Linguistics in Reading Instruction
	EDRD	529	Reading and Study Problems in the Secondary School

** Doctoral students only

Guidance and Educational Psychology

	EDGP	543	Group Procedures
	EDGP	545	Laboratory: Interpersonal Communication Skills
*	EDGP	593	Workshop: Guidance
	EDGP	669	Consultation in Psychological Education
	EDGP	682	Vocational Appraisal

Higher Education – Student Personnel

	EDHE	651	Advanced Individual Study
	EDHE	657	Higher Education
	EDHE	658	Organization and Administration of High Education
	EDHE	693	State-wide Control and Coordination in Higher Education

Library Science

	LSCI	500	Introduction to Librarianship
*	LSCI	501	Cataloging and Classification
*	LSCI	503	Reference and Bibliography
*	LSCI	510	Administration of the Multi-Media School Library
***	LSCI	515	Library Administration
	LSCI	525	Selection of Media for Young People
	LSCI	531	Public Libraries
	LSCI	605	History of Books and Printing
	LSCI	611	Library Resources
	LSCI	617	Administration of Academic Libraries
	LSCI	621	Advanced Library Management

* Graduate students only

*** Master's degree candidates in Library Science only.

Secondary Education and Educational Media

Secondary Education

	EDSE	503	Measurement and Evaluation in the Secondary School
	EDSE	504	Teacher-Made Materials

Educational Media

	EDAV	569	Analysis and Criticism of Media Materials
*	EDAV	571	Utilization of Audio-Visual Materials in Education

Special Education and Rehabilitation

	EDSP	501	Tests and Measurements for Exceptional Children
+	EDSP	585	Education of the Gifted Child
	EDSP	623	Advanced Techniques of Individual Mental Testing
	EDSP	674	Special Education: Seminar in Special Problems

COLLEGE OF LIBERAL ARTS

Art

	ART	490/691	Directed Individual Problems—Drawing
	ART	565	Art Workshop
	ART	566	Watercolor Workshop
	ART	569	Art Workshop
	ART	661	Philosophy of Art Education

Biology

Biological Science

	BSCI	612	Laboratory Methods in Biological Science II

* Graduate students only.
+ Undergraduate students only.

Botany

	BOT	535	The Algea
	BOT	601	Advanced General Botany

Microbiology/Immunology

	MIIM	601	Advanced General Microbiology

Zoology

	ZOOL	301	General Ecology
	ZOOL	403	Research Problems in Aquatic Biology
	ZOOL	605	Limnological Methods
	ZOOL	703	Problems in Aquatic Biology

Chemistry

+	CHEM	543	History of Chemistry
	CHEM	548	Scientific Evidence
	CHEM	601	Modern Chemistry for Teachers
	CHEM	611	Analytical Chemistry for Teachers
	CHEM	621	Organic Chemistry for Teachers
	CHEM	631	Physical Chemistry for Teachers
	CHEM	671	Biochemistry for Teachers

Communicative Disorders

*	CD	501	Survey of Communicative Disorders
*	CD	520	Advanced Diagnostic Techniques
	CD	521	Disorders of Fluency
*	CD	523	Disorders of Articulation

+ Undergraduate students only
* Graduate students only

Communicative Disorders (cont'd)

CD	529	Academic Programs for the Hearing Impaired
CD	596	Field Work in Communicative Disorders
* CD	599	Case Study Methods

English

ENGL	324	Writing of the Short Story
ENGL	466	Faulkner
* ENGL	507	Medieval English Literature
ENGL	576	Development of the Short Story
* ENGL	592	Modern English Grammar

Geology

Geography

GEOG	111	Human Geography

Geology

GEOL	104	The Earth and Man
GEOL	603	Earth Sciences I

History

HIST	521	American Intellectual and Social History, 1607-1860

Home Economics

H EC	232	Interior Design
H EC	301	Textiles
H EC	311	Nutrition
H EC	343	Housing
H EC	412	Diet in Disease

Journalism

JOUR	505	Editorial Direction
JOUR	507	Law and Ethics of the Press

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* Graduate students only.

Journalism (Cont'd)

JOUR	511	Writing Workshop
JOUR	522	Reporting Public Affairs
JOUR	610	Mass Media and Social Change

Mathematics

MATH	267	Elementary Mathematical Analysis I
MATH	459	Introduction to Complex Analysis

Modern Languages

Italian

ITAL	101	Elementary Italian

Russian

RUSS	101	Elementary Russian

Music

MUS	613	Directed Individual Study
MUS	622	Seminar in Music Education

Philosophy and Religions

Philosophy

PHIL	301	History of Philosophy
PHIL	401	Metaphysics
PHIL	501	American Philosophy
PHIL	507	Symbolic Logic
PHIL	509	Existentialism
PHIL	513	Philosophy of Literature
PHIL	607	Major Western Philosophers

Religions

REL	308	Contemporary Protestant Thought

Physics and Astronomy

+	PHYS	533	Survey of Topics in Physics
	PHYS	565	Laboratory Methods in Physical Science I
	PHYS	581	Space Science Workshop
	PHYS	607	Survey of Nuclear Science
	PHYS	608	Survey of Electronics

Political Science

	P SC	309	The Legislative Process
	P SC	333	Criminal Investigation
	P SC	441	Criminal Law
	P SC	445	Police and the Juvenile Offender
	P SC	507	The Planning Process
	P SC	511	Contemporary International Problems
	P SC	515	American Political Thought
	P SC	531	Government and Public Policy
	P SC	645	Organizational Behavior
	P SC	671	Criminal Justice Systems
	P SC	673	Directed Studies in Criminal Justice

Psychology

	PSY	313	Analysis of Behavior
	PSY	319	Introduction to Brain Science and Behavior
*	PSY	509	Physiological Psychology
	PSY	415	Introduction to Clinical Psychology
	PSY	511	Developmental: Advanced Child Psychology

+ Undergraduate students only.
* Graduate students only.

Psychology (cont'd)

	PSY	519	Group Dynamics
+	PSY	553	Theories of Learning
	PSY	557	Attitudes and Attitude Change

Sociology and Anthropology

Anthropology

	ANTH	509	Indians of Mississippi and the South
	ANTH	531	Advanced Biblical Archaeology

Sociology

	SOC	323	Occupations and Professions
	SOC	401	Advanced General Sociology
	SOC	433	Youth Corrections
	SOC	443	Sociology of Religion
	SOC	450	The Sociology of Psychic Phenomena
	SOC	505	Practicum in Research
*	SOC	535	Socialization and Society
	SOC	601	Studies in Social Theory

Speech and Theatre

Radio-Television

+	SP	533	Instrumental TV Production and the Classroom
*	SP	536	Broadcast Station Management
*	SP	538	Radio Program Production
*	SP	539	Television Program Production
	SP	633	Advanced Instructional Television Production

+ Undergraduate students only.
* Graduate students only.

Speech

* SP	513	Advanced Oral Interpretation

Theatre

* SP	501	Advanced Acting

PARA-LEGAL STUDIES

LA	201	Introduction to Law
LA	202	Legal Bibliography
LA	203	Mississippi Legal Systems I
LA	204	Mississippi Legal Systems II
LA	205	Library Management
LA	206	Commercial Law I
LA	207	Commercial Law II
LA	209	Mechanics of Property Transactions
LA	213	Law Office Management
LA	214	The Legal Assistant in the Legal Profession

SCHOOL OF PHARMACY

Health Care Administration

HCA	585	Hospital Administration
HCA	595	Hospital Pharmacy Administration

URBAN AND REGIONAL PLANNING

U PL	501	Introduction to Urban Planning
U PL	509	Transportation Planning
U PL	604	Urban Planning Internship
U PL	630	Urban Design
U PL	637	Individual Research Project

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* Graduate students only.

UNIVERSITY OF SOUTHERN MISSISSIPPI
JACKSON BRANCH

Proposed Courses
Fall 1976

COLLEGE OF EDUCATION AND PSYCHOLOGY

Science Education

SCE	453/553	Earth and Environmental Sciences for the Intermediate School Teacher

Counseling and Guidance

CGE	422	Curriculum Development of Career Education
CGE	434	Guidance of the Exceptional Child
CGE	737	Pastoral Counseling Seminar

Library Science

LS	642	Special Libraries

Psychology

PSY	420/520	Sensation and Perception
PSY	424/524	Animal Psychology
PSY	722	Experimental Design
PSY	723	Comparative Psychology
PSY	752	Management Training and Development
PSY	764	Factor Analysis
PSY	778	Experimental Child Psychology
PSY	779	Seminar in Development Psychology

Educational Psychology

EPY	371	Psychology of Preadolescense and Early Adolescence
EPY	476	Learning in Adult Education
EPY	722	Brain Damage and Behavior
EPY	750	Leadership
EPY	760	Intelligence: Theories and Development
EPY	774	Advanced Child Psychology
EPY	775	Advanced Adolescent Psychology

Elementary Education

CIE	414	Creative Dramatics for Children
CIE	415	Fundamentals of Children's Theatre

COLLEGE OF LIBERAL ARTS

Geography

GHY	360	Introduction to Community and Regional Planning

COLLEGE OF FINE ARTS

Music

MUS	462/562	Hymnology
MUS	365	The Enjoyment of Music
MUS	733	History of Style of Music

Theatre Arts

THE	477	Puppetry

COLLEGE OF SCIENCE AND TECHNOLOGY

Polymer Science

PSC	440/540	Drug Identification

SCHOOL OF SOCIAL WORK

Social Work

SWK	639	Problem Solving
SWK	689	Social Work Practice – Health

SCHOOL OF HOME ECONOMICS

Hotel and Home Administration

HRA	478	Seminar in Hotel and Restaurant Industry

UNITED STATES' EXHIBIT 14

[LOGO OMITTED]

JACKSON STATE UNIVERSITY
JACKSON, MISSISSIPPI 89217

July 25, 1975

OFFICE OF
THE PRESIDENT

Dr. E. E. Thrash
Executive Secretary and Director
Board of Trustees of State
Institutions of Higher Learning
Post Office Box 2336
Jackson, Mississippi 39205

Dear Dr. Thrash:

This is pursuant to your letter of July 21, and our telephone conversation of July 22 regarding the course offerings at the Universities Center.

I understand from your letter and our conversation that you consider these course offerings to be in accord with the provisions of the HEW Compliance Plan and, thus, not duplicative of the course offerings at Jackson State University.

My academic staff and I have perused this list and find that the courses are not duplicative of Jackson State University's courses with respect to nomenclature. We are concerned, however, that many of these courses seem very similar in subject matter and content. We believe that all of the courses in the field of education could easily and much more economically be offered at Jackson State University. Nevertheless, we are very appreciative of your expressed concern with abiding by the provisions of the Compliance Plan in the matter of non-duplication of course offerings at Jackson State University.

Reciprocally, if we see a need to duplicate course offerings, we shall seek permission from the Board of Trustees. Moreover, we shall continue to comply with the Plan by upgrading, strengthening, and diversifying our instructional program so as to move this institution out of its previous state of racial isolation and into the mainstream of Mississippi higher education, so as to serve all the people regardless of race, creed, sex or economic circumstances.

We at Jackson State University shall look forward to your continued support of our efforts to offer quality education to our students.

Sincerely yours,

/s/ JOHN A. PEOPLES, JR.
John A. Peoples, Jr.
President

JAP:frm
Copy: Mr. W. M. Shoemaker
Dr. R. C. Cook
Mr. Milton E. Brister

UNITED STATES' EXHIBIT 15

June 5, 1974

Mrs. Carol LaCoss
Route 1, Box 159
Florence, Mississippi 39073

Dear Mrs. LaCoss:

This is to acknowledge your recent letter regarding the Universities Center. Enclosed is a copy of Mr. Brister's letter written to the Board of Supervisors of Hinds County. Please review this letter and know that the Board has searched hard for the right answers.

Thank you very much for your interest and continued support of public higher education.

Sincerely yours,

E. E. Thrash
Executive Secretary and Director

ECT:wp

Enclosure

'74 MAY 10 AM 9:45

Board of Trustees, Institutions of Higher Learning
P.O. Box 2336
Jackson, Mississippi

Attention: Dr. E. E. Thrash

Dear Dr. Thrash:

As a student currently enrolled in course number Psy 401/601, Abnormal Psychology, at the Universities Center here in Jackson, I am writing to enlist your assistance in preventing the discontinuing of most of the courses now being taught at the Center.

Students are being told that if they wish to continue their education next fall, they may enroll at Jackson State. To many of us this is not practical or desirable. I am taking my instruction at the Center at night, and would feel very uncomfortable and personally unsafe in going into the Jackson State area at night.

More important, I wish to call to your attention the appalling waste of taxpayers' money in virtually closing an educational institution of this size and scope. As a taxpayer and resident of this area, I would protest this even if I were not closely connected to the situation as a student.

Again, I urge you to do whatever you can possibly do to reverse the decision to close this vitally needed school.

Yours very truly,

/s/ CAROL LACOSS
(Mrs.) Carol La Coss
Rt. 1 Box 159
Florence, Mississippi 39073

UNITED STATES' EXHIBIT 16

June 5, 1974

Mrs. E. J. White
838 Rutherford Drive
Jackson, Mississippi 39206

Dear Mrs. White:

This is to acknowledge your recent letter regarding the Universities Center. Enclosed is a copy of Mr. Brister's letter written to the Board of Supervisors of Hinds County. Please review this letter and know that the Board has searched hard for the right answers.

Thank you very much for your interest and continued support of public higher education.

Sincerely yours,

E. E. Thrash
Executive Secretary and Director

ECT:wp

Enclosure

May 8, 1974
836 Rutherford Dr.
Jackson, Miss. 39206

Dear Sir,

It is with real disappointment that I write to you asking for further consideration before closing the R. & D. Center for evening classes.

I am a housewife and student who attends Mills as well as the R. & D. Center. This will be a great waste of the taxpayers money to leave those facilities idle, not to mention the fact that many people cannot afford to attend the private colleges in Jackson. And if the White people who now attend the R. & D. Center do transfer to Jackson State, what good will a degree from Jackson State be to them?

Many of us are looking to see how you act on this situation.

Sincerely yours,

Mrs. E. J. (Katherine) White

UNITED STATES' EXHIBIT 17

June 5, 1974

Miss Karen Kennedy
1320 North West Street – #203
Jackson, Mississippi 39202

Dear Miss Kennedy:

This is to acknowledge your recent letter regarding the Universities Center. Enclosed is a copy of Mr. Brister's letter written to the Board of Supervisors of Hinds County. Please review this letter and know that the Board has searched hard for the right answers.

Thank you very much for your interest and continued support of public higher education.

Sincerely yours,

E. E. Thrash
Executive Secretary and Director

ECT:wp

Enclosure

1320 North West Street – #203
Jackson, MS 39202
May 8, 1974

Mr. Pete McGee, President
Hinds County Board of Supervisors
Post Office Box 686
Jackson, MS 39205

Dear Mr. McGee:

In the past, I took advantage of the educational services offered by the Universities Center. I was delighted with the assistance I received from the Center's personnel as well as the instruction of the staff. This letter is to express my extreme dismay over the recent decision to discontinue classes at the Universities Center. It is, indeed, a shame that now the Center will be closed to those who wished to further their education. I might add that as a professional, I had planned to attend the Universities Center in order to meet continued education requirements of my field. Now, I must consider attending night classes at the denominational schools in the area, at which, of course, the tuition will be much higher. Furthermore, I would not consider taking classes at Jackson State University because as a young woman, I would not go into this area of the city alone at night.

Let me again express my disillusionment that the millions of dollars spent by the taxpayers of Hinds County to construct and maintain this facility will be wasted. I am sure that you, as do I, consider education an important tool in raising Mississippi's economic status. I, therefore,

urge you to work to have the recent ruling to close this valuable resource overruled.

Sincerely yours,

/s/ KAREN KENNEDY
(Miss) Karen Kennedy

cc: Dr. E. E. Thrash
Miss. State College Board
3825 Ridgewood Road
Jackson, Mississippi

UNITED STATES' EXHIBIT 20

June 4, 1974

Dr. Hilton Baxter
Executive Director
Office of the Governor
Education and Training
Suite 182, Universities Center
3825 Ridgewood Road
Jackson, Mississippi 39211

Dear Dr. Baxter:

This is to acknowledge your recent letter regarding the Universities Center. Enclosed is a copy of Mr. Brister's letter written to the Board of Supervisors of Hinds County. Please review this letter and know that the Board has searched hard for the right answers.

Thank you very much for your interest and continuing support of public higher education.

Sincerely yours,

E. E. Thrash
Executive Secretary and Director

EET:wp

Enclosure

[SEAL OMITTED]
OFFICE OF THE GOVERNOR
EDUCATION & TRAINING
Suite 182, Universities Center
3825 Ridgewood Road
Jackson, Mississippi 39211

William Lowe Waller
Governor

Dr. Milton Baxter
Executive Director

May 15, 1974

Mr. Thomas N. Turner, Sr.
President
Board of Trustees of State
Institutions of Higher Learning
Belzoni, Mississippi 39038

Dear Mr. Turner:

Please find enclosed a letter I received from Mrs. Martha Kabbes. It is self-explanatory.

If I can be of any service to you or the Board, please feel free to contact me.

Sincerely,

/s/ Milton Baxter
DR. MILTON BAXTER

MB/ad

[LOGO OMITTED]

THE EDUCATION CENTER
4080 Old Canton Road 39216 790 Raymond Road 39204
962-2812 373-2746
Jackson, Mississippi

May 8, 1974

Dr. Milton Baxter
3825 Ridgewood Road
Suite 182
Jackson, Mississippi 39211

Dear Dr. Baxter:

On behalf of the staff at The Education Center, I am askir g you to contact the Board of Trustees, State Institutions of Higher Learning and request that Jackson State University be allowed to use the present facilities of the Universities Center for graduate programs. It is my understanding that Jackson State University plans to have a renovation and building program underway within the next few years and until such time, they cannot met the needs of graduate students in the Jackson area at the existing campus.

Your prompt attention and consideration of this request will be appreciated.

Sincerely yours,

/s/ Martha T. Kabbes
MARTHA T. KABBES

MTK:l

UNITED STATES' EXHIBIT 23

[LOGO OMITTED]

WJDX/WLBT
Box 2171/Area Code 601 Phone 948-3333
Jackson, Mississippi 39205

June 22, 1972

College Board
3825 Ridgewood Rd.
Jackson, Miss.

Dear Sirs,

I was informed June 21, by the Universities Center, that you were considering letting a person get a degree from the Center without attending the university from which the degree is comferred. I attended Hinds Junior College from 1970-1972 and am now classified as a Junior. I would like to stay in Jackson and go to school but I would like a degree from a major university, preferably Miss. State. I am getting married in August and money will be scarce as it is for most newlyweds. I have a good job in Jackson at WLBT and would like to stay on.

I am asking if at all possible that you will decide to allow a student get their degree from the Center without getting the now required 30 hours on campus. I understand that Jackson State is fighting this because they are a state supported school and are located in Jackson. But this is a predominantly Negro college and I feel that the white students should have a state supported institution which they could attend. I know many of my friends are in the same situation and we would all appreciate your help in this matter.

Thank you,

/s/ Steve Frazier

STEVE FRAZIER
Rt. 2, Box 197-A
Terry, Miss.

June 27, 1972

Mr. Steve Frazier
Route 2, Box 197-A
Terry, Mississippi 39170

Dear Mr. Frazier:

Thank you for your letter of June 22, expressing interest in an off-campus degree-granting program at the University Center in Jackson. At this time there are still many aspects to be considered in establishing such an off-campus branch, and the Board of Trustees is now studying all of the pro's and con's involved with the best interest of the people of Mississippi foremost in mind. Let me assure you that all possible is being done to fulfill the educational needs of the state citizenry, and a final decision is forthcoming.

Again, your interest in this vital matter is greatly appreciated. If this office may assist you further, please feel free to call on us.

Sincerely yours,

E. E. Thrash
Executive Secretary and Director

EET:cw

UNITED STATES' EXHIBIT 25

BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING
3825 Ridgewood Road
P.O. Box 2336
Jackson, Mississippi 39205

TO: Dr. E. E. Thrash
FROM: Dr. Charlie Q. Coffman
DATE: April 10, 1978
SUBJECT: Meeting of April 7, 1978, concerning Universities Center Activities

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1. General discussion reviewing priorities for academic course offerings by the universities.

2. Review of past procedures for establishing courses offered in the Center.

   a. Agreement between institutions

   b. Elimination of courses that were duplicative of those offered by Jackson State University

3. Discussion of Compliance Plan statement relating to the Universities Center and Jackson State University.

4. Conclusions (Impressions)

   a. Current courses are not duplicative of Jackson State University, based on courses known to be offered at Jackson State University.

   b. Problems that surfaced:

      1. Jackson State University does not want to request Board permission to offer courses available at the Universities Center.

2. Jackson State University can offer courses under the above idea after the ones offered at the Universities Center are approved without knowledge of the Board. Thus saying that courses are in duplication.

   Unless Jackson State University acts in good faith too, it will be difficult to provide unduplicating through the Universities Center.

OFFICIALS ATTENDING MEETING OF APRIL 7, 1978 CONCERNING UNIVERSITIES CENTER

JACKSON STATE UNIVERSITY
Dr. Estus Smith
Dr. Oscar A. Rogers
Dr. Norman Handy
Dr. Curtis Baham

MISSISSIPPI STATE UNIVERSITY
Dr. Robert E. Wolverton
Dr. Homer Coskrey

UNIVERSITY OF MISSISSIPPI
Dr. Harvey Lewis
Mr. Maurice Inman

UNIVERSITY OF SOUTHERN MISSISSIPPI
Dr. Shelby Thames
Dr. Clyde Ginn

BOARD OF TRUSTEES STAFF
Dr. Charlie Q. Coffman
Dr. Thomas C. Meredith

UNITED STATES' EXHIBIT 28

DEGREES AWARDED JACKSON BRANCH

Calendar Year	Degree/Program	Black	Other	Unknown
1975	Master's			
	Special Education	0	7	0
	Guidance Education	0	2	0
	School Administration	1	2	1
	Industrial Education	0	2	0
	Agricultural and Extension Education	0	3	0
1976	Master's			
	Special Education	1	2	0
	Guidance Education	0	2	0
	School Administration	1	1	0
	Industrial Education	0	3	0
	Agricultural and Extension Education	2	2	0
	Secondary Education	1	3	0
	Elementary Education	0	2	0
1977	Bachelor's			
	History	0	1	0
	Master's			
	Guidance Education	0	2	0
	School Administration	1	3	0
	Industrial Education	0	1	0
	Agricultural and Extension Education	0	2	0
	Secondary Education	1	1	0
	Elementary Education	1	17	0
	Extension Education	0	3	0
	Science	0	1	0
	Education	0	5	0

Source: Records and Registration, March, 1980

DEGREES AWARDED – Continued
JACKSON BRANCH

Calendar Year	Degree/Program	Black	Other	Un-known
1978	Bachelor's			
	Agriculture	0	1	0
	Master's			
	Agriculture	0	1	0
	Education	4	43	0
1979	Bachelor's			
	Education	0	1	0
	Master's			
	Agriculture	0	1	0
	Education	6	45	1
	Extension Education	0	2	0

Source: Records and Registration, March, 1980

UNITED STATES' EXHIBIT 39

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

FACTORS INVOLVED IN THE ADMISSION TO FRESHMAN CLASS STANDING AT STATE INSTITUTIONS OF HIGHER LEARNING IN MISSISSIPPI

February, 1976

A catalogue survey of the admission policies of the eight state universities reveals some twelve factors which various universities consider for general or regular admission to the freshman class. These factors do not necessarily represent all requirements for each university, but include those of greater importance relative to the total admission procedure. Transfer, special, or early admission programs are not included in this discussion. Possible factors as published in university bulletins include submission of scores on the American College Testing (ACT) Program test, graduation from an accredited high school with a minimum of 15 acceptable units, high school transcripts, letters or signatures of recommendation, official or formal application forms, acceptable general academic record and moral conduct, physical examination, and application fee. Some of the universities have special admission procedures for students graduating from unaccredited high schools or for those students who have completed 15 units, but have not graduated from high school.

Each of the universities requires entering freshmen to submit standardized test scores, although specific requirements vary. Two institutions, Jackson State University and Mississippi University for Women, accept either the scores for the ACT or the Scholastic Aptitude Test (SAT)

of the College Entrance Examination Board. Officials at Mississippi University for Women add that this university converts the entering student's SAT scores to equivalent ACT scores. Board of Trustees policy specifies that all applications for admission to the freshman class must be supported by the applicant's score on the ACT. Minimum scores can be established by authorities at each institution. Board policy requires that non-resident students must achieve a composite standard score of 20 unless this requirement is waived for scholarship award purposes by the executive head of the institution. Each university's specific requirements for admission relative to the ACT appear in a separate section of this report.

Most of the universities with the exception of Jackson State University and the University of Southern Mississippi require graduation from an accredited high school with a minimum of at least 15 acceptable units. The catalogues at each university specify the units required in subject areas. Mississippi University for Women will fully admit students who graduate from accredited high schools in the upper half of their classes, regardless of the specified units of credit. Mississippi Valley State University requires a minimum of 16 units. The University of Mississippi does not indicate whether or not the high school must be accredited. Jackson State University requires graduation from high school without mention of accreditation or specified credits. High school transcripts are required by the University of Southern Mississippi, although this university only implies that high school graduation is a requirement.

All eight universities require the entering freshman to forward high school transcripts to the institution. Jackson State University, however, requires the student's high school records only for those failing to have ACT scores mailed to the University or to achieve a minimum score of

15 on the ACT. The University of Mississippi indicates that the transcript must show at least 7 semesters of secondary work. Other institutions will consider admission on the basis of 6 semesters and require the final semester records to be filed later.

Three universities state that the student must file letters or signatures of recommendation: Alcorn State University, Delta State University, and Mississippi Valley State University. The other universities may have such a requirement as part of their formal application forms, but do not specify any such requirement in their respective catalogues.

Each university except Mississippi University for Women specifies that the student must submit some kind of official application form. Jackson State University requires such a form only for those students who fail to have ACT scores mailed to the University or who fail to score at least 15 on the ACT. Mississippi University for Women implies that a form is necessary, but does not specifically state this requirement.

Delta State University, Mississippi University for Women, Mississippi Valley State University, and the University of Southern Mississippi make direct reference to the need for the applicant to be of acceptable moral character and have an overall good academic record. Mississippi University for Women bases its final selection of students for admission on the student's (1) academic record, (2) ACT or SAT scores, and (3) "personal fitness for M.U.W." Other institutions may consider evidence of moral character and academic ability to be a part of the requirement for recommendations or may include the need for such evidence in the application form. Not all of the universities, however, make direct mention of this requirement in their catalogues.

Physical examinations are required by Alcorn State University, Delta State University, Mississippi University for Women, and Mississippi Valley State University. Other institutions may include a physical examination form as part of the official application form for admission.

Students who graduate from unaccredited high schools are admitted to Delta State University after special examination. Mississippi University for Women admits graduates from unaccredited high schools on a conditional basis. If the student completes 15 acceptable units without actually graduating from high school, Mississippi University for Women will also consider her for admission.

Most of the universities except the University of Mississippi state that students who are at least 20 years old and who have not graduated from high school can be admitted on the basis of satisfactory scores on the General Education Development (GED) test. Alcorn State University and Delta State University require a student to be 21 before he can be admitted through the GED program. Jackson State University specifies no minimum age. Mississippi University for Women admits "mature students" on the basis of the GED, with the general understanding that the student's normal class must have graduated from high school. Students applying at Mississippi Valley State University who take the GED can include those who are at least 20 as well as students whose high school educations have been interrupted and who are the age at which they ordinarily would have finished high school.

Two universities, Alcorn State University and Mississippi Valley State University, state that students must submit a $5.00 application fee. Alcorn State University applies this fee toward the student's registration fees; Mississippi Valley State University does not.

Specific ACT Score Requirements

Alcorn State University—Requires students to take the ACT, no minimum score given for resident or non-resident students.

Delta State University—(1) Resident students must take the ACT and submit a minimum composite standard score of 15; (2) Non-resident students must take the ACT and submit a minimum composite standard score of 20; (3) Resident students whose composite standard score is 12, 13, or 14 may be admitted on a provisional basis during the summer session; (4) Students admitted by examination (GED) must also submit the required ACT scores.

Jackson State University—(1) High school seniors who list the University as their first, second, or third choice on the ACT profile and whose composite score is 15 or above are given conditional admission without having to file the traditional application form or having their high school transcripts sent to the University; (2) High school seniors who do not list the University as their first, second, or third choice and whose composite ACT score is 15 or above are given conditional admission without filing application forms or sending their high school transcripts to the University; (3) Students may be admitted on an unconditional basis with ACT scores and certification of high school graduation; (4) Students who do not have ACT scores sent to the University and those whose composite standard score is below 15 must submit the traditional application forms and high school transcripts before being admitted; (5) Catalogue indicates that the University will also accept SAT scores, no minimum given.

Mississippi State University—(1) Requires students to take the ACT and submit minimum scores of 15 for resident and 20 for non-resident students. Some non-resident

students may be admitted on a score of less than 20 in the case of scholarships; (2) Students may be admitted with a minimum ACT score of 13 for special summer school admission and must maintain a C average in any courses for which they register during the summer; (3) Students admitted by examination (GED) must also meet all other admission requirements.

Mississippi University for Women—Requires students to take either the ACT or the SAT and submit satisfactory scores. Officials at MUW add that a regression equation is used for admission purposes. This equation, developed for MUW, uses the student's high school grade point average on academic subjects only, the ACT composite (SAT scores are converted to equivalent ACT scores), and the norms established by previous freshmen. A student with a predicted grade average of 65 or above is accepted for admission.

Mississippi Valley State University—(1) Requires students to take the ACT, i[illegible]imum score given for resident or non-resident studer[illegible]) Students admitted by examination (GED) must al[illegible]bmit the required ACT scores.

University of Mississippi—(1) Requires resident students to submit a minimum composite standard score of 15 on the ACT or 680 total on the SAT. Students admitted on the basis of SAT scores must take the ACT during fall Orientation; (2) Requires non-resident students to submit a minimum composite standard ACT score of 20 or 870 on the SAT. Students admitted on the basis of SAT scores must take the ACT during fall Orientation; (3) Students receiving the Non-Resident Alumni Awards are admitted under the requirements for resident students.

University of Southern Mississippi—(1) Resident students must take the ACT and submit a minimum composite

score of 15; (2) Non-resident students must take the ACT and submit a minimum composite score of 20; (3) Students admitted by examination (GED) must meet all other University admission requirements.

UNITED STATES' EXHIBIT 48

BOARD OF TRUSTEES ACTIONS REGARDING ACT SCORES

REGULAR STUDENTS

May 20, 1976

Board of Trustees approved the following enrollment and retention policy relative to admissions in all institutions.

> Effective with the fall registration, 1977-78, the eight universities are required to limit enrollment of entering freshmen to those students scoring nine (9) or above on the American College Test (ACT). Those institutions which presently have an entrance standard requiring a higher ACT score must maintain that minimum admission score.
>
> Those freshman students admitted in the fall of 1976 with an ACT score less than 9 must make a "C" average or a quality point average of 2.0 out of 4.0 during the combined first two semesters of attendance or be dropped from the university.

February 17, 1977

Board of Trustees approved the following enrollment policy relative to admission standards for doctoral-level universities.

> All students for regular admission must score 15 or higher on the American College Test. Students with an ACT score of 12, 13, and 14 may be admitted to the summer session on probation. These students are required to earn a 2.0 grade point average out of 4.0 with an academic course registration of a minimum of a full-time load if they are to be readmitted for the

> regular session. The maximum number of students admitted with less than an ACT of 15 shall be no more than the five (5) percent of the previous year's enrollment at the freshman level.

June 16, 1977

Board of Trustees approved a change in the February 17 policy statement, exempting students whose commitments on admission had been made prior to February 17, 1977.

> Those students who received commitments on admission from the universities prior to the February, 1977, meeting of the Board of Trustees are exempt from the regulations adopted at that time pertaining to the minimum achievement on the American College Testing Program.
>
> The names of the students in this category should be furnished to the Board office and the Chairman of the Instruction, Administration, and Policy Committees.

December 15, 1977

The admission standards of May 20 were revised, and the standards of February 17 were rescinded by the Board of Trustees as follows:

> The Board approves the revision of the admission standards adopted May 20, 1976 as follows:
>
> > Effective with the fall registration, 1977-78, the eight universities are required to limit enrollment of entering freshmen to those students scoring nine (9) or above on the American College Test. Those institutions which presently have an entrance standard requiring a higher ACT score must maintain that minimum admission score.

The Board rescinds the admission standards adopted February 17, 1977, and adopts the following:

> In addition to students admitted at the current minimum admission ACT scores, an institution may enroll five (5) percent of the previous fall freshman class enrollees to accommodate talented and/or high risk students with an ACT score of nine (9) and up to the current (1977-78) minimum admissions ACT score of that particular institution.

April 28, 1977

The Board of Trustees formulated a uniform policy governing scholarships and grants for children of alumni living outside Mississippi as follows:

> Formulation of a uniform policy designed to phase out and eliminate grants and scholarships solely

UNITED STATES' EXHIBIT 56

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

RATIONALE OF THE BOARD OF TRUSTEES IN ADOPTING MINIMUM ACT SCORE REQUIREMENT FOR ADMISSION

1. The Board is committed to upgrading the quality of education at all universities, especially the historically black institutions.
2. Limited resources must be used for educational opportunities for the students with the best chance of success in graduating from the universities.
3. The Board selected the American College Testing Program many years ago as one of the criteria for admission. Effective in the fall of 1977, no student will be admitted with an ACT composite score of less than 9. Of the 2,546,076 college bound students in the United States who took the ACT from 1972-75, 95 percent scored above 9.
4. Of the graduates of teacher education programs of the historically black institutions of the state of Mississippi who took the National Teachers Examination, 50 percent did not score a composite of 850, currently the score being used as the minimum score required to be licensed to teach in Mississippi.
5. Experience has proven that students making less than a composite of 15 on the ACT have a 25 percent chance of graduating, whereas all students have a 50 percent chance regardless of reasons for dropping out of school.
6. The traditional faculty at universities are not the best manpower to use in remedial work with those

students who are less well-prepared for college-level work.

7. In recent years, an increasing number of students have been admitted with lower ACT scores. Since 1973, at least 30 percent of the enrollees at the historically black universities in Mississippi have scored 9 or below.
8. During the past three years, less than 20 percent of the graduates of the Mississippi Valley State University nursing program have passed the licensure examination to practice as a Registered Nurse.
9. The Carnegie Commission reports evidence that blacks with the same ACT score as whites achieve lower grade point averages in college than the white students. Despite this apparent fact, the Board has selected a lower ACT score as the minimum for the historically black institutions than the scores established as the minimum requirement at the historically white institutions.
10. The Board recognizes that junior colleges in the state have open admission policies, allowing all citizens the opportunity to attempt college level work.

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

POSSIBLE OBJECTIONS TO THE USE OF A MINIMUM ACT SCORE AS THE SOLE CRITERION FOR ADMISSION

1. High school grades have provided the best single predictor of college success. However, it is the consensus of opinion that aptitude test scores along with high school grades will give a better projection of college success in the first year of performance.
2. Standardized tests are generally considered to have a degree of cultural-ethnic bias.
3. The historically black institutions are committed to upgrade those citizens with the greatest educational deficiencies.
4. Allocation of resources is related to enrollment and production of student credit hours.
5. Substantial federal grants are available for special service programs (remedial) at institutions of higher learning.
6. Federal programs of student aid provide most of the funds needed by economically deprived citizens to attend institutions of higher learning.

GENERAL INFORMATION – ENTRANCE EXAMINATIONS

ACT (American College Testing Program)

The academic tests cover four subject matter areas: English Usage, Mathematics Usage, Social Studies Reading, and Natural Sciences Reading.

Standard scores range from 1 (low) to 36 (high). While the minimum standard score for all four tests is 1, the maximum standard score differs for each of the four tests: English Usage, 33; Mathematics Usage, 36; Social Studies Reading, 34; Natural Sciences Reading, 35.

The Composite score is the average of the combined standard scores on the four academic tests. The minimum Composite score is 1; the maximum is 35.

The average Composite score for college-bound high school students is approximately 19. (Based on 2,546,076 college-bound students who took the ACT Assessment 1972-1975).

The average ACT Composite scores for Mississippi's state universities for 1975-1976 were:

Alcorn State University	10.91
Delta State University	18.66
Jackson State University	11.78
Mississippi State University	19.53
Mississippi University for Women	18.14
Mississippi Valley State Univ.	10.31
University of Mississippi	19.87
University of Southern Miss.	18.20
AVERAGE MEAN	15.93

SAT (Scholastic Aptitude Test of the College Board Admissions Testing Program)

There are two divisions of this test: Verbal and Mathematics. No composite score is computed as a part of scores

reported by this testing service. Individual colleges and universities may add the scores of the Verbal and Mathematics sections together to arrive at what they use for a composite score.

Scores for both sections of the test range from 200 (low) to 800 (high).

The national average for college-bound seniors in 1975-76 was 431 Verbal and 472 Mathematics.

Comments of the SAT/ACT Testing Programs:

"Perhaps the most reliable research findings in education are that high school grades are predictive of college grades and, further, that academic aptitude tests and high school grades combined are a better predictor of college grades than either alone."

Source: 1976-77 Edition, *Using the ACT on the Campus,* American College Testing Program, 1976, p. 5.

(Concerning SAT scores as predictor of college performance) ". . . usually, test scores do not predict as well as the student's high school record. Neither high school record nor test scores alone are as accurate as a combination of the two. For some colleges, the most accurate predictor is a combination of a student's SAT scores, high school grades, class rank, and Achievement Test (College Entrance Examination Board) scores."

The SAT "measures verbal and mathematical reasoning abilities. It is intended to supplement the secondary school record and other information about the student in assessing competence for college work."

Source: *Guide for High Schools and Colleges,* College Entrance Examination Board, 1976, pp. 19 and 2.

"Colleges and universities can be grouped into at least three classes according to their policy regarding admission of students: highly selective; moderately selective; and minimum selective, or open door."

"The ACT Composite score is frequently used in selective admission situations. The mean ACT Composite score for college-bound high school students is a standard score of approximately 19. Scores between 15 and 20 should be considered low average, and scores between 20 and 25 should be considered high average. Scores above 25 are clearly superior, and scores below 15 indicate a student with a restricted educational development background."

Source: 1976-77 Edition, *Using the ACT on the Campus*, American College Testing Program, 1976, p. 12.

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

SUMMARY OF GENERAL REQUIREMENTS AND FACTORS CONSIDERED FOR ADMISSION TO FRESHMAN CLASS, RESIDENT STUDENTS

Institution	*Open Admission Policy	Standardized Test Scores	CEEB Achievement Tests	High School Record (Grade)	High School Rank	**Required High School Units	Graduation From Accredited High School	Individual Evaluation: Extra-curricula Activities	Individual Evaluation: Recommendation Good Conduct Record
University of Alabama	–	X	–	X	--	X	–	–	–
Auburn University	–	X	–	X	–	X	X	–	–
University of Arkansas	X	X (if high school average is less than "C")	–	X	–	X	X	–	–
University of Florida	–	X	–	X	X	X	X	X	X
University of Georgia	–	X	X	X	–	X	–	X	X
University of Kentucky	X	X	–	X (not required of all students)	–	–	X	–	–

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

SUMMARY OF GENERAL REQUIREMENTS AND FACTORS CONSIDERED FOR ADMISSION TO FRESHMAN CLASS, RESIDENT STUDENTS – Continued

Institution	*Open Admission Policy	Standardized Test Scores	CEEB Achievement Tests	High School Record (Grade)	High School Rank	**Required High School Units	Graduation From Accredited High School	Individual Evaluation: Extra-curricula Activities	Individual Evaluation: Recommendation Good Conduct Record
Louisiana State University	X	X	–	–	–	–	X	–	–
University of Maryland	–	X	–	X	X	–	–	–	–
University of North Carolina	–	X	X	X	X	X	X	–	X
Clemson University	–	X	X	X	X	–	–	X	X
University of South Carolina	–	X	–	X	–	–	–	–	–
University of Tennessee	–	X	–	X	–	X	X	–	–
University of Texas	–	X	X	–	X	X	X	–	–
University of Virginia	–	X	X	X	X	X	X	X	X
University of West Virginia	–	X	–	X	–	X	X	–	–

* Upon graduation from accredited or approved high school.

** Number and/or special subjects.

Institution	Standardized Test Used	Minimum Score Required?	Consideration Given to High School Records	Special Programs for Students With Poor Records	*Special Admission Programs?
University of Tennessee	ACT	Yes	Either an ACT score of 17 or high school average of 2.25. Admission is not denied solely on this basis however	Yes, special adviser is assigned	Yes
University of Texas (reserves the right to limit enrollment on the basis of ability and university resources)	SAT	No	Acceptable rank in relation to SAT scores	Yes, provisional admission program	Yes
University of Virginia (admission on individual evaluation)	SAT	No	Acceptable class rank required	Not discussed in bulletin	No

Institution	Standardized Test Used	Minimum Score Required?	Consideration Given to High School Records	Special Programs for Students With Poor Records	*Special Admission Programs?
West Virginia University	ACT	No	High School average determines when student should apply for admission	Not discussed in bulletin	No

* *Special Admission* – Early admission, admission of non-graduates of high school, etc.

NOTE: Most of the above universities apply standardized test scores for purposes of admission, placement, and scholarship consideration combined. None of the universities uses test scores alone for the admission decision.

UNITED STATES' EXHIBIT 103

April 11, 1972

Dr. John K. Folger, Executive Director
Tennessee Higher Education Commission
908 Andrew Jackson State Office Building
Nashville, Tennessee 37219

Dear John:

The Mississippi Legislature has authorized the Board of Trustees of Institutions of Higher Learning to establish degree-granting branches at former resident centers in several locations throughout the state. One is in Natchez, about forty miles from Alcorn A. & M. College, a black institution, and another branch in Jackson across town from black Jackson State College. I'm sure you realize the implications of this decision. I am aware of the litigation in Tennessee regarding Tennessee State University and the Nashville Center and expect that we in Mississippi will face similar action. I have copies of Judge Gray's opinion of August 21, 1968, and his memorandum and order of February 3, 1972, but would appreciate having a copy of the 'white presence' plan you submitted on March 15, 1972, and any additional information concerning your strategy in compiling the plan for August 1, 1972.

If the above request is too confidential, I will understand and wish for you the best of luck.

Sincerely yours,

E. E. Thrash
Executive Secretary and Director

EET:st
bc: Dr. Charles Miller

Dr. John K. Folger, Executive Director
Tennessee Higher Education Commission
908 Andrew Jackson State Office Building
Nashville, Tennessee 37219

Dear John:

The Mississippi Legislature has authorized the Board of Trustees of Institutions of Higher Learning to establish degree-granting branches at former resident centers in several locations throughout the state. One is in Natchez, about forty miles from Alcorn [A. & M.] College, a black institution, and another branch in Jackson across town from black Jackson State College. I'm sure you realize the implications of this decision. I am aware of the litigation in Tennessee regarding Tennessee State University and the Nashville Center and expect that we in Mississippi will face similar action. I have copies of Judge Gray's opinion of August 21, 1968, and his memorandum and order of February 3, 1972, but would appreciate having a copy of the 'white presence' plan you submitted on March 15, 1972, and any additional information concerning your strategy in compiling the plan for August 1, 1972.

If [the above request is too confidential, I will understand and wish for you all the best of luck.]

Thank you for your cooperation.

[SY]

NOTE: The matter in brackets indicates hand written corrections to the typewritten letter.

UNITED STATES' EXHIBIT 200

BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING

PROGRAMS APPROVED
JANUARY, 1973 THROUGH AUGUST, 1980

Institution	Level	Program	Date
Alcorn State University	Bachelor's	Applied Mathematics & Computer Science	2/75
	Bachelor's	Educational Psychology	1/80
	Bachelor's	Industrial Technology	8/76
	Bachelor's	Nursing	2/77
	Master's	Agriculture	1/80
Delta State University	Bachelor's	Crafts	11/73
	Bachelor's	Environmental Science	1/80
	Bachelor's	Fashion Merchandising	8/76
	Bachelor's (BBA)	Insurance and Real Estate	2/77
	Bachelor's (BFA)	Interior Design	1/79
	Bachelor's	Library Science	10/73
	Bachelor's	Management Information Systems	1/76

PROGRAMS APPROVED – Continued
JANUARY, 1973 THROUGH AUGUST, 1980

Institution	Level	Program	Date
Delta State University Continued	Bachelor's	Nursing	2/77
	Bachelor's	Psychology	5/74
	Master's	School Psychology	1/80
	Master's	Traffic Safety Education	8/76
	Specialist	Business Education	1/76
	Specialist	Secondary Education	1/79
	Doctorate (Ed.D)	Professional Studies	8/80
Jackson State University	Bachelor's	Art	1/78
	Bachelor's	Finance	2/77
	Bachelor's	Fire Protection & Safety Technology	8/76
	Bachelor's	Management	2/77
	Bachelor's	Marketing	2/77
	Bachelor's	Meterology	5/75
	Bachelor's	Office Administration	1/80
	Bachelor's (BM)	Piano	1/78
	Master's (MPA)	Accounting	2/77

PROGRAMS APPROVED – Continued
JANUARY, 1973 THROUGH AUGUST, 1980

Institution	Level	Program	Date
Jackson State University Continued	Master's	Biology	6/74
	Master's	Chemistry	6/74
	Master's	Computer Science	6/74
	Master's	Economics	9/77
	Master's	Educational Technology	8/78
	Master's	English	6/74
	Master's	Environmental Science	6/74
	Master's	History	6/74
	Master's	Mathematics	6/74
	Master's	Political Science	6/74
	Master's	Sociology	6/74
	Master's	Public Policy and Administration	6/77
	Specialist	Business Education	9/77
	Doctorate (Ed.D)	Early Childhood Education	8/79
Mississippi State University	Bachelor's	Agricommunication	8/76
	Bachelor's	Real Estate and Mortgage Financing	8/78
	Bachelor's	Surveying	8/75

PROGRAMS APPROVED – Continued
JANUARY, 1973 THROUGH AUGUST, 1980

Institution	Level	Program	Date
Mississippi State University Continued	Master's	Adult Education	1/76
	Master's (ME)	Engineering (Aerospace, Agricultural, Biological, Chemical, Civil, Electrical, Industrial, Mechanical, Nuclear, Petroleum)	1/76
	Master's (MPPA)	Public Policy and Administration	6/77
	Master's	Statistics	8/76
	Doctorate (Emphasis)	Agricultural & Extension Education	8/80
	Doctorate (Ph.D)	Food Science & Technology	8/75
	Doctorate	Forest Resources	8/79
Mississippi University for Women	Bachelor's	Art History	8/80
	Bachelor's	Broadcasting	1/78
	Bachelor's	Broadcast Journalism	1/78
	Bachelor's	Dance	8/80
	Bachelor's	Paralegal Studies	8/79
	Master's (MFA)	Art	1/78

PROGRAMS APPROVED – Continued
JANUARY, 1973 THROUGH AUGUST, 1980

Institution	Level	Program	Date
Mississippi University for Women Continued	Master's	Clothing, Textiles & Merchandising	8/79
	Master's	Family and Human Development	8/79
	Master's	Nursing	1/75
	Master's	Physical Education	1/78
	Doctorate (Ph.D)	Home Economics Education	1/80
Mississippi Valley State University	Certificate	Social Gerontology	2/77
	Bachelor's	Computer Science	6/75
	Bachelor's	Social Gerontology	2/77
	Master's	Environmental Health	1/76
University of Mississippi	Certificate	Paralegal Assistant	8/75
	Bachelor's	Computer Science	1/75
	Bachelor's	Court Reporting	8/76
	Bachelor's	Forensic Science	4/74
	Bachelor's (BBA)	Managerial Finance	1/80
	Bachelor's	Manpower	8/75
	Bachelor's (BPL)	Paralegal Studies	2/77

PROGRAMS APPROVED – Continued
JANUARY, 1973 THROUGH AUGUST, 1980

Institution	Level	Program	Date
University of Mississippi Continued	Bachelor's (BSW)	Social Work	8/76
	Bachelor's (BFA)	Theatre	1/76
	Master's	Criminal Justice	5/75
	Master's	Public Administration	9/74
	Master's	Student Personnel	8/75
	Specialist	Business Education	2/75
	Specialist	Communicative Disorders	10/74
	Specialist (HS)	History	2/77
	Specialist (SSS)	Social Science	2/77
University of Mississippi Medical Center	Bachelor's	Cytotechnology	1/80
	Master's	Community Health Nursing	6/74
	Master's	Pathology	9/74
	Master's	Pediatrics Nursing	6/74
	Master's	Psychiatric Nursing	6/74
	Doctorate (Ph.D)	Pathology	9/74

PROGRAMS APPROVED – Continued
JANUARY, 1973 THROUGH AUGUST, 1980

Institution	Level	Program	Date
University of Southern Mississippi	Bachelor's	Building Construction Technology	9/73
	Bachelor's	Computer Technology	9/73
	Bachelor's	Electronics Technology	8/78
	Bachelor's	Food Science & Technology	9/73
	Bachelor's	Hotel & Restaurant Management	3/74
	Bachelor's	Industrial Technology	9/73
	Bachelor's	Interior Design	8/76
	Bachelor's	Mechanical Technology	9/73
	Bachelor's	Paralegal Studies	8/76
	Master's	Community Health Nursing	3/74
	Master's	Computer Science & Statistics	6/74
	Master's	Criminal Justice	3/74
	Master's	Nursing Service Administration	3/74
	Master's	Psychiatric-Mental Health Nursing Practitioner	3/74
	Master's	Public Relations	8/80
	Master's	Research & Evaluation	1/80

PROGRAMS APPROVED – Continued
JANUARY, 1973 THROUGH AUGUST, 1980

Institution	Level	Program	Date
University of	Specialist	Home Economics	9/74
Southern	Specialist	Industrial and Vocational Education	8/76
Mississippi	Specialist	Physical Education	2/77
Continued	Doctorate (D.M.)	Performance & Pedagogy	3/74

UNITED STATES' EXHIBIT 346

Assessment of Academic Ability – High School Grades

In some situations, a student's high school record has been found to be the best single predictor of his success in college. The high school record is a summary of the academic work performed over a period of several years while a test involves 3 to 4 hours of performance in a test situation. Thus, although tests both overlap and supplement high school grades, it would be foolish to abandon this traditional source of valuable information. Consequently, as a regular part of the ACT Assessment, students are asked to report their high school grades so that grades can be routinely used along with test scores in predictions of college performance.

* * * * *

High School Grades and College Academic Accomplishments

The best indicator of future success is often past success in a similar setting. As would be expected from this, high school grades have long been considered the best single indicator to use in predicting college success. Because of the usefulness of high school grades for this purpose and the need to have high school grades readily available for predictive analyses, ACT collects information about high school grades as a routine part of the ACT Assessment.

* * * * *

Implications for users. The implications of these results are that generally whatever prediction of college accomplishment which either high school grades or test scores give, the two in combination will give better predictions. The implication for the user is that unless he has a special reason to use only one type of predictor, he should

consider their use in tandem. Another implication of these three sections on the prediction of college academic accomplishment is that while generally good prediction is possible, there is variability among colleges on the degree of prediction attained. This result implies both the need for local validity studies and the need to examine aspects of the differences in predictability which occur.

Finally, an important implication of the results of these sections is that while the prediction of college academic accomplishment by high school grades and test scores is good when compared with other types of prediction in education and the social sciences, the predictors still account for only a modest portion of the variation which occurs in the criterion. Thus, while these two variables (high school grades and ACT scores) are among the very best available predictors for college academic accomplishment, they in no way guarantee resultant college accomplishment.

* * * * *

UNITED STATES' EXHIBIT 407

[LOGO OMITTED]

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
Washington, D.C. 20201

November 10, 1973

Dr. Thomas N. Turner
President
Board of Trustees of State Institutions
of Higher Learning
1855 Eastover Drive
Post Office Box 2336
Jackson, Mississippi 39205

Dear Dr. Turner:

On July 13, 1973, I acknowledged receipt of the Trustees' submission of the June 7, 1973, "Plan of Compliance," as requested by my letter to you of May 21, 1973.

We have reviewed the June 7 submission in detail (as well as the information submitted earlier in response to my letters of March 27 and May 10, 1973) and have evaluated the submission in terms of the criteria set forth on pages two and three of my letter of May 21.

As a result of this review and evaluation, I have reluctantly concluded that the June 7 submission is not a "statewide [higher education] desegregation plan" within the terms of the opinion and judgments of the United States Court of Appeals for the District of Columbia in *Adams* v. *Richardson,* 480 F. 2d 1159 (D.C. Cir. 1973), copies of

which I furnished you in my letter of July 13. I have also concluded that your submission shows no promise of being, when implemented, an "acceptable plan" within the meaning of those judgments. Moreover, we have had the opportunity in the last five months to focus more thoroughly on the issues involved and as a consequence we have developed additional criteria which we hope will assist you in meeting the legal obligations imposed by Title VI of the Civil Rights Act of 1964. We believe that these criteria should significantly assist the state in accelerating its efforts to develop a plan which, when implemented, will bring the Mississippi System of State Institutions of Higher Learning into compliance with Title VI.

Accordingly, this letter will advise you, pursuant to Section 80.8(d) of the Departmental Title VI Regulation, 45 CFR Section 80.8(d), of the specific reasons which I believe compel a determination that the Mississippi State System is not currently in compliance with Title VI of the Civil Rights Act of 1964 and with that Regulation. If the State System fails to develop and submit to this Office by November 30, 1973, a satisfactory commitment to comply with Title VI, I will have no alternative but to initiate enforcement action to secure the System's compliance, which action may include referral to the Department of Justice with a recommendation that appropriate judicial action be initiated. The commitment must acknowledge in writing an obligation to eliminate the vestiges of the dual System of higher education, and must commit the State System to immediately begin to develop an acceptable desegregation plan and to submit that plan to this Office within 90 days from receipt of this letter. The commitment must also describe in detail the procedure and timetable to be used in developing the plan.

Pursuant to Section 80.8(d), no enforcement action will be taken before November 30, 1973, and until that time I and members of my staff will be available for further discussion of the State System's apparent violations of Title VI and of appropriate remedies for those violations. As indicated above, it is our hope that this period will provide the System an opportunity to submit a satisfactory commitment for State-wide desegregation, and thereby to demonstrate the possibility of complying voluntarily through implementation of an acceptable plan.

I. FINDINGS

A. *Student and Faculty Patterns*

In appraising the extent to which vestiges of the dual higher education System may remain in Mississippi, this Office has considered first your statistics concerning faculty and students, eliminating for this analysis junior colleges, the Medical Center, and the Gulf Coast Research Laboratory. The present racial composition of the faculties and student bodies at all eight remaining institutions appears clearly attributable to the existence of the prior dual System based on race. Accordingly, we must conclude that the dual System has not yet been fully disestablished.

As to faculty, there were in fall 1972 413 full-time black faculty, representing 16.7 percent of a total of 2478 full-time faculty employed by the eight senior institutions. Of the 413 black faculty, 405 (98.3) percent) were employed at the three institutions which were black institutions during the period of enforced racial segregation: Alcorn A. & M., Jackson State College, and Mississippi Valley State College. The remaining black faculty were employed by the five historically white institutions, where they comprised .4 percent of the total faculty. The number and percentage

of black faculty at those institutions, and the total number of faculty, were as follows:

	Total Faculty	Black Faculty	Percent Black
Delta State College	162	0	0
Mississippi State University	643	4	.6
University of Mississippi	395	1	.3
University of Southern Mississippi	721	2	.3

(Mississippi State College for Women is excluded from this analysis because no relevant employment data for the College was submitted.)

Non-blacks comprised 27.1 percent of the total faculty at the three historically black institutions, distributed as follows:

	Total Faculty	Non-Black Faculty	Percent Non-Black
Alcorn A. & M.	125	44	35.2
Jackson State College	309	81	26.2
Mississippi Valley State College	123	26	21.1

With regard to students, there were in fall 1972 9,967 blacks enrolled among a total of 34,544 full-time undergraduates at the eight institutions (28.8 percent). Of the total number of black students, 8715 (87.4 percent) were enrolled at the historically black institutions where they constituted 99.8 percent of the total enrollment, as follows:

	Total Students	Black Students	Percent Black
Alcorn A. & M.	2254	2245	97.6
Jackson State College	4110	4104	99.9
Mississippi Valley State College	2371	2366	99.8

The remaining black students attended the five institutions which were white institutions during the period of enforced segregation, where they comprised 1252 (4.8 percent) of the total 25,818 students enrolled:

	Total Students	Black Students	Percent Black
Delta State College	2281	195	8.5
Mississippi State College for Women	2224	181	8.1
Mississippi State University	7840	279	3.5
University of Mississippi	6212	207	3.3
University of Southern Mississippi	7262	390	5.4

From the statistics, it appears that Mississippi has made a first significant step toward faculty desegregation at the historically black institutions, but that no such progress has been made at the historically white institutions. It appears that some recent progress has been made in enrollment of black students at the historically white institutions: from enrollment in those institutions of 8.2 percent of all black students in 1970, to 12.6 percent in 1972-73. There has been no progress, however, in desegregating the

historically black institutions, which had a .1 percent non-black enrollment in 1970-71 and a .2 percent non-black enrollment in 1972-73.

B. ***Institutional Roles and Curricula***

The Mississippi System has grown and is growing: from a 1968 undergraduate enrollment of 30,506, the eight institutions grew to a 1972 enrollment of 34,554, an increase of 11.7 percent. Analyses of the State's recent building program, and of curricula changes at those institutions, indicate that they have tended and will continue to tend to reinforce the continuing effects of your System's duality.

The role of each historically black institution is effectively contrasted with those of neighboring historically white ones by the limited breadth and variety of the black colleges' curricula; our analysis indicates those programs will remain insufficient to attract significant numbers of white students. Program duplication between neighboring historically black and white institutions is extensive; within areas of duplication, the white institutions generally offer broad programs while the black institutions offer only limited opportunities. The white institutions also offer programs unique to their geographic regions, and likely to attract students for academic reasons, far more frequently than do the black institutions. While many of these unique programs have been developed in the white institutions only within the past three years, the major programs in the black schools remain concentrated in traditional fields.

For example, Alcorn A. & M. is one of two four-year institutions in the southern portion of the State, the other being the University of Southern Mississippi (U.S.M.). Since 1970 U.S.M. has initiated or reorganized 21 academic programs, begun a three-year Bachelor Degree program, and upgraded two resident centers to degree-granting branches, one of which is close to Alcorn in the southwestern corner of the State. In the same period Alcorn has approved nine new majors. Thus U.S.M. currently grants 15 Bachelor Degrees in 8 divisions, covering 105 majors; Alcorn grants 2 Bachelor Degrees covering 30 majors. While U.S.M. is undertaking programs which promise to attract black students to that campus, notably Project IODINE and certain recruitment and retention efforts, it appears unlikely that Alcorn will attract significant numbers of white students.

Contrast also exists between Alcorn A. & M. and Mississippi State University (M.S.U.), which while not in geographic proximity, are Mississippi's two land-grant institutions. While Alcorn has instituted four new agricultural majors since 1970, M.S.U. at that time had already 24 majors in the College of Agriculture and two majors in Forest Resources. Construction since 1971 has reinforced the different agricultural capabilities of the two institutions, and generally has increased the disparity between their physical plants. Since 1971 Alcorn has constructed or begun to construct faculty housing, an agricultural building, a student union expansion, and student dormitories; M.S.U. has constructed or begun to construct a library annex, a forest products utilization laboratory, a veterinary science building, an entomology complex, a dairy sciences building, and a seed technology building. The Mississippi Agricultural and Forestry Experiment Station of M.S.U. is operated jointly with the Alcorn Branch Experiment Station, and Alcorn agricultural staff members also hold appointments in the MAFES. Nonetheless, the preponderance of agricultural curricula and facilities at M.S.U. make it a clearly more attractive alternative to white

students who desire an agricultural education at a land-grant institution.

In the northwest quadrant of Mississippi, historically white Delta State College offers extensive "nonprofessional" Bachelor of Science degrees, a Bachelor of Science degree in Criminal Justice, and Bachelor of Arts and Science degrees in Secondary Education which are separate from its academic arts and sciences curricula. None of these programs are offered at historically black Mississippi Valley State, the only other institution in the northwest area. Delta's broad-based academic curricula, not available at Mississippi Valley, have been reinforced through inception of graduate and education programs in 1970 and business curricula in 1969. In contrast, Mississippi Valley's most extensive programs are in industrial education; its newly begun health and community service majors, while likely to attract both white and black students, represent far less of a diversification or expansion than that which has occurred at Delta.

Although not geographically close, Jackson State College and the University of Mississippi are the most diversified of the historically black and white institutions. Jackson, the largest of the black institutions, remains primarily a teacher's college with fairly extensive education offerings, although since 1970, 12 new departments have been added to its curricula and 17 programs expanded to create a more diversified liberal arts program. The University of Mississippi, which continues to have the broadest liberal arts and pre-professional offerings in the State, has just created 6 new departments out of its former School of Education. This duplication of most of Jackson's programs in education appears to represent a substantial disincentive for

white students to attend Jackson, although Jackson's growth in this area could have attracted such students.

Some cooperative programs between neighboring historically white and black institutions, as well as certain efforts of individual white institutions, have shown promise of aiding desegregation. One such program has been that between Mississippi State and Mississippi Valley State which was directed, successfully, toward gaining the latter's accreditation through faculty exchange and through study by Mississippi Valley faculty at Mississippi State. Promise is also shown by the cooperative programs between Alcorn and U.S.M. at the latter's Natchez branch, by the cooperation already described between Alcorn and M.S.U. in agricultural programs, and by programs involving Mississippi Valley and the University Medical Center, and Mississippi Valley and three of the historically white four-year institutions. Your information does not indicate however, the precise nature of each institution's participation in such programs, or the numbers of participants from the various institutions.

II. *SUBMISSION OF JUNE 7, 1973*

On March 27, 1973, we requested detailed information on your institutions of higher learning, in order to fully evaluate the compliance of Mississippi's State System with Title VI. On May 21, 1973, when we wrote to you requesting an acceptable plan to achieve that compliance, our Office had not yet received that information, and we were therefore unable to discuss problems of compliance other than those reflected in the enrollment and employment statistics discussed in that letter and in Section I of this letter. Nonetheless, we posited with some specificity the objectives and level of detail of an acceptable plan:

. . . I am requesting that you devise a plan which will increase significantly the presence of white students and faculty at the predominantly black institutions and increase significantly the presence of black students and faculty at the predominantly white institutions. In addition, this plan must, where necessary, provide supportive services to minority students designed to provide them with reasonable opportunity to complete their education successfully at the latter institutions.

• • •

Each step of the plan should include a description of its predicted contribution to desegregation at each institution and a timetable for its implementation. You should also indicate by institution, the degree of student and faculty desegregation which you project for each school year during the period of the plan's operation. We suggest in the development of your plan that you seek the full participation of all concerned segments of the white and black communities.

Notwithstanding this request, the submission of June 7, entitled a "Plan of Compliance," holds out no realistic promise of any significant change in enrollment or employment patterns and identifies neither specific positive steps to accomplish such change nor specific predictions of change. With few exceptions, the submission states policies of prospective nondiscrimination in various aspects of the higher education process, without detailing actions which will eliminate the effects of past racial segregation under law.

The only areas in which the submission is at all specific are those of Student Recruitment and Equal Employment

Opportunity. Five steps are identified with regard to recruitment, including provision of admissions information to "all high schools and junior colleges" and "assignment of the responsibility of minority student recruitment to a specific person or group," recruitment visits to high schools and junior colleges, special efforts to recruit minority students, and use of minority personnel and organization for recruitment purposes but the failure to provide sufficient detail with respect to the latter three renders a meaningful assessment of the potential impact on student enrollment impossible. With regard to employment, the submission requires each institution "to have an affirmative plan pertaining to equal employment opportunities as prescribed by Executive Order 11246," but does not state the extent to which prospective plans will redress the existing faculty employment pattern.

Although the State's submission does mention recently-approved construction at the three historically black institutions, it does not indicate when the construction will be complete, whether it is designed to increase enrollment capacities, or the precise contribution to desegregation the construction is expected to make.

The overall objective of an acceptable plan is the desegregation of the Mississippi System of State Institutions of Higher Learning so that a student's choice of institution or campus, henceforth, will be based on other than racial criteria. This objective should be achieved through a plan for specific actions by the Mississippi System and its individual institutions, coordinated at the State level to promote a unified approach throughout the System. As the United States Court of Appeals for the District of Columbia stated in its June 12, 1973 decision in *Adams* v. *Richardson*:

> The problem of integrating higher education must be dealt with on a statewide rather than a school-by-school basis. [footnote omitted] Perhaps the most serious problem in this area is the lack of statewide planning to provide more and better trained minority group doctors, lawyers, engineers and other professionals. A predicate for minority access to quality post-graduate programs is a viable, co-ordinated state-wide higher education policy that takes into account the special problems of minority students and of Black colleges.

Your submission of June 7 does not constitute a plan which fulfills these criteria, and as noted, shows no realistic promise of achieving the objective of desegregation.

III. *ELEMENTS OF AN ACCEPTABLE PLAN*

A. *SCOPE*

1. *Burden and Impact*

An acceptable plan must provide for desegregation, as a unified System, of all the institutions concurring in the June 7 submission. It must be specific both as to objectives and processes, and each action in the plan must be set forth in detail. The plan and its implementation may not place a greater burden on black as compared to white students, faculty, or staff in any aspect of the educational process. Such burdens include denial to students of course offerings, access to facilities, financial aid, or other benefits, and denial to faculty and staff of equal salaries, benefits and seniority rights. The closing or downgrading of an historically black institution in connection with desegregation would create a presumption that a greater burden is being placed upon the black students and faculty in Mississippi.

The impact on desegregation which is anticipated to result from each action contained in the plan must be expressed in numerical terms, particularly with regard to faculty employment and student enrollment. Further, the impact of any actions developed subsequent to submission of the plan must be projected prior to their implementation. Such actions include addition of new institutions, enlargement of existing facilities, modification of admissions standards (System-wide or at any individual institution), and addition or deletion of degree programs at any institution New degree programs, construction, or other actions which impede desegregation will violate Title VI.

2. *Responsibility, Costs, and Reporting*

Your June 7 submission, which has the signed concurrence of the institutions to which it applies, provides that

> It shall be the responsibility of the Federal Relations Committee of the Board of Trustees to review periodically with the individual institutions [the submission] and to make investigations to ascertain whether the plan is being properly implemented. Said Committee shall report to the Board its findings and recommendations, if any.

An acceptable plan must identify the individual(s) responsible for ensuring actual development and implementation of the plan on a System-wide basis, whether that responsibility is to reside with the Federal Relations Committee or elsewhere.

If action by the State Legislature or approval by State boards or other agencies is required as a precondition to implementing any portion of the plan, the need for such approval must be stated and described. All costs of imple-

mentation of your plan must be identified and estimated, and the revenue sources for meeting such costs indicated. The dates by which each of the steps necessary to accomplish full desegregation of the public higher education System of the State of Mississippi. Finally, your plan should establish a system for semi-annual reporting of the progress made by the State System and the individual institutions in implementing each described action to comply with Title VI, and should outline the steps taken to make such a system operational.

3. *Advisory Boards and Board of Goverance*

To date we have been unable to determine the racial composition of any advisory Boards and Boards of Governance of the State System. Your plan should: (a) identify the various boards, agencies, and organizations in the State connected with the higher education program and their predecessors beginning with 1953, and as to each (b) explain how the members are selected, (c) indicate current and past membership by race since its inception or since 1953, whichever is later, and (d) describe briefly its duties and functions.

4. *Biracial Committee*

In order to ensure meaningful participation in development of the plan and support for its implementation, we recommend that Mississippi establish a biracial committee, including persons of each race not employed by the State and at least one representative of each historically black institution, and having a proportion of black members at least equal to the current proportion of black twelfth grade students in the State. This special committee should share in the direct responsibility for developing your desegregation plan, and we would also suggest that

it approve the plan and participate in its implementation. If you choose to establish such a committee, please include in your response a description of its projected composition and the mode of selection of its members.

5. *Non-Academic Employment, Contractual Services, and University-Related Services and Organizations*

Your plan must include specific steps providing for elimination of discrimination in: (a) non-academic employment; (b) provision of services by outside organizations through contracts; and (c) operation of entities related to or part of institutions, such as the agricultural extension service and experiment stations related to land-grant institutions. These areas of activity are so closely related to the operation of the higher education System and its component institutions that continued discrimination in them will adversely affect provision of equal educational opportunities.

B. *STUDENTS*

The objective of your plan in this area is enrollment of a significant number of students of both races at each institution in your System. The extent of the student segregation which must be remedied, and thus the scope required of its plan, is illustrated by the fact that less than one-seven of all black students attend the five historically white institutions, as discussed in Section I of this letter, while only 20 non-black students attend the three historically black institutions. None of those eight institutions has an enrollment which is less than 92.5 percent of one race.

1. *Role of Institutions*

Your plan must contain a statement of each institution's role expressed in a non-racial manner. Any statement that

a given institution is meant for individuals of a particular race will violate Title VI. The description of the role must include: (a) a summary of the educational program to be offered at each institution; (b) the students whom such institutions are to serve; and (c) the potential opportunities for such students in employment or further education as a result of completing the educational program of the institution.

a. *Academic*

Generalized academic goals for each State institution are stated in the institutional catalogues. Your plan makes no attempt, however, to define roles for each institution which, when taken together, will promote their desegregation. For example, we referred in Section I of this letter to the introduction of health and community service majors at Mississippi Valley. A definition of its role which emphasized specialization in these and related majors could enable it to effectively complement the more broadly-based curricula at Delta State.

The specific role of Alcorn A. & M's catalogue emphasizes (page 32) that Alcorn is

> sensitive to and active in appropriately educating those of its students who are disadvantaged economically, socially, culturally, and/or academically.

It continues that Alcorn is "concerned with the task of guiding its students who are predominantly Negro, into the mid-stream of American life." By focusing upon the fact that many of its students are both "disadvantaged" and black, without expliciting affirming a commitment to those of the State's white students who may be disadvantaged, the catalogue suggests both that Alcorn is intended only for disadvantaged students who are black, and also that as a consequence of its racial composition it offers an education which is limited in comparison to that of other institutions in the State.

b. *Structural*

There are in Mississippi publicly operated two-year colleges, four-year colleges which, like Alcorn, focus to some degree upon service to the disadvantaged, and other four-year institutions. Your plan must define how the structure within which they are organized will operate to promote desegregation. Where two or more institutions are located in the same area, you must effect sufficient differentiation in their academic roles to ensure increased enrollment at each institution by members of the race historically in the minority there. Similarly, your plan must ensure that operation of supportive programs and services for "disadvantaged" students will contribute to desegregation of the State System as a whole, with particular attention to the desegregation of Alcorn.

2. *Curricula*

a. *General*

Placement of curricula at an institution constitutes an important element of its institutional role. Your plan, therefore, must indicate the broad nature of the curricular offerings at each institution which are designed to aid in implementation of its role, with particular emphasis on their impact on desegregation. The plan should indicate: (i) the impact of such programs on faculty and student desegregation in numerical terms; (ii) whether such programs are duplicated elsewhere, and (iii) where such duplication exists. Where, as particularly at Alcorn, an institution as-

sumes the role of serving "educationally disadvantaged" students, the institution should offer special programs and services sufficient to fulfill its role, and your plan should specify what criteria will be used to identify which students are disadvantaged and what special courses or services will be provided them.

b. *Evaluation*

Although institutional catalogues indicate that the State System reflects, to some degree, academic specialization among institutions, your submission does not address the problem of whether existing or proposed curricula at the historically black colleges duplicate programs offered elsewhere in the State. If after analyzing existing course or program duplication you believe it may impede your desegregation efforts, you should consider including in your plan methods to create sufficient differentiation among campuses as will promote further desegregation in your State System.

Such methods could take the form of (i) placing or realigning curricula at particular institutions to enable them to compete aggressively for students of the race not historically identified with those institutions, or (ii) eliminating duplicative programs. (We should stress that the latter recommended method does not imply that all program duplication need be eliminated: core courses, particularly those in the more traditional disciplines, may be retained at all locations, while more specialized or technical programs might be allocated among institutions in a manner designed to promote desegregation.) In connection with achieving appropriate academic differentiation among the various institutions, you should consider existing curricular offerings throughout the State prior to initiating

new courses or programs. Either of the methods suggested above could be undertaken on either a State-wide or regional basis.

Although the State has discretion in selecting from among the procedures described in this section, and any others it may develop, it must adopt such plans as will effect student body desegregation. Under any approach, the unduplicated degree programs offered at historically black institutions should have broad appeal and must not perpetuate an image of the institution as being intended only for black students. Therefore, a plan including such approaches must describe the degree programs, staff, and facilities to be allocated which will attract white students to the historically black colleges.

3. *Retention of Black Students*

Elimination of your dual System of higher education may not result in a reduction in the percentage of black students graduating from four-year institutions in the State. If black students in historically white institutions show a significantly greater attrition rate than black students in historically black institutions, or than white students at historically white ones, the plan should provide for implementation of appropriate academic development programs at the historically white institutions designed to eliminate the disparate attrition levels.

4. *Discrimination at the Institutional Level*

Elimination of discriminatory policies and practices at individual campuses is both a means to achieving System-wide desegregation and an end in itself. Such policies and practices encompass institutional recruiting and admissions programs, student financial aid, college-supported

housing, health care, employment services, training assignments such as student teaching, and intercollegiate athletic programs. Much of the discrimination often found to exist in these areas may be remedied by corrective action at the institutional level.

Your June 7 submission sets forth policies of nondiscrimination in many areas of institutional activity. Your plan should describe the steps and provisions made by the State System for coordination and supervision of such efforts. Where inter-institutional activities are conducted between groups of institutions organized on a racial basis (e.g., athletics and debating conferences composed entirely of historically white or black colleges), action by the State will be required to realign such racially-based groupings. The Office for Civil Rights will continue to monitor individual institutions in these areas to ensure that all discrimination is eliminated, and acceptance of a State-wide plan will not relieve them of their individual responsibilities.

C. *RECRUITMENT AND OTHER ACTIONS AFFECTING ADMISSION*

A vital component of any desegregation effort is the recruitment of qualified persons of all races to attend all State institutions, and therefore your plan must provide for a program of recruitment of students to attend institutions historically maintained for members of the opposite race. Since historically black institutions have at times experienced severe difficulty in recruiting white students because of the attitudes of high school counselors and administrators, we anticipate that your plan will provide for recruitment programs to be carried out with cooperation among all the individual institutions, and also for positive

participation in these efforts by high school counselors. Potential applicants to any institution in the System should be equally informed as to the merits of each, and recruitment should be coordinated at the State level so that institutions do not compete for the same black students to the exclusion of other qualified students.

Although Item 2 of your submission suggests five procedures for individual institutions to use in student recruitment, the procedures are insufficiently specific and the most salient of them are not mandatory. For example, the first and fourth items state that:

> 1. Each institution is encouraged to visit the high schools and junior colleges of the state for recruiting purposes. When such visits are made, the institutions will invite all members of the classes affected in the recruiting program.
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> * * *
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> 4. Special efforts to recruit minority group students are encouraged by the Board.

To comply with Mississippi's obligation to desegregate all its institutions, such procedures must be designed to contact and attract significant proportions of students who would be in the minority race at each institution. A major objective in this area should be to reduce substantially the differential rates at which black and white high school graduates matriculate at State institutions. Your plan should quantify the number of students of each race which each institution will expect to contact, and estimate the effect on applications and admissions of each institution's recruitment. Recruitment by the individual institutions should be coordinated by the State.

D. *FACULTY AND STAFF*

The objective in this area of employment should be to achieve System-wide desegregation, so that a significant number of faculty and staff of both races will be employed and located at each institution in the System. Although 16.7 percent of full-time faculty throughout the System are black, only 7 of the 1921 full-time faculty at the historically white institutions are black. Desegregation of faculty at the historically black institutions appears to have begun, but the proportion of total faculty represented by black faculty at these institutions is still five times their proportion in the total faculty of the System as a whole.

Your plan must describe in detail the process by which the objective of faculty and staff desegregation will be met, and must formulate numerical goals which project the anticipated results of that process. Any reduction in the percentage of tenured or non-tenured black faculty and staff in the system will violate Title VI. Your plan must include coordinated recruitment programs designed to promote employment of black faculty and staff at the historically white colleges and universities, and white faculty and staff at the historically black ones, and should include both faculty and staff who are presently employed in the System and graduate degree candidates of both races. Recruitment of students of both races for graduate education within Mississippi will eventually broaden the in-State pool of faculty candidates.

In addition to implementing faculty and staff recruitment programs, you may seek increased faculty and staff desegregation in connection with such realignment of duplicative programs as you find necessary with regard to student desegregation. If this approach is taken, tenured faculty should be included, and no faculty or staff member should be reassigned to the detriment of his or her eligibility for tenure and other employment benefits.

Faculty desegregation may also be increased through use of the mechanism of tenure. The tenure method would require an institution to include in its consideration of applicants for tenured positions non-tenured faculty from other State institutions, thus creating increased opportunities for faculty of one race to teach at an institution where their race is currently in the minority. A similar process could be used in hiring new graduates of State graduate programs for non-tenured positions.

The cooperative programs described in Section I of this letter appear to provide a good foundation for inter-institutional cooperation in faculty desegregation, although you have not been specific in describing the extent of institutional or individual participation in those programs. Should your recruitment program fail to achieve the objective of faculty desegregation, however, actions such as those described above will be required to ensure your System's compliance with Title VI. Your obligations in this regard are independent of those under Executive Order 11246.

E. *RESOURCES*

The objective in this area is to assure that comparable resources are provided by the State at historically black and white institutions of similar size, specialization, or function. These resources include: (1) the number and quality of facilities; (2) the level of *per capita* expenditures by the institution; (3) the amount and availability of student

financial aid provided from State sources; (4) the quality of instructional and non-instructional programs, services and staff; and (5) the number and quality of degree offerings available. Your plan must describe how the educational programs offered at such similar institutions will be made comparable in quality, or it must show that resource comparability has been achieved. As to instructional staff, we suggest that your plan provide for such training and further education of present faculty and staff members as will promote desegregation and comparability. Your submission contains no specific information on how resource comparability is to be achieved in the System.

Your plan must contain specific steps which will be taken to ensure that the black institutions, which historically have received less financial assistance from the State and whose academic programs have traditionally been viewed as more limited, attain at least the academic caliber of the other similar institutions in the State. Further, the plan must indicate what physical plant alterations will be made in the system, when the alterations will be completed and what impact these alterations may be expected to have upon Mississippi's desegregation efforts.

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The judgment of the Court of Appeals in *Adams* requires that I obtain a State-wide higher education desegregation plan. May letter to you of May 21, 1973, was an attempt to secure such a plan. In this letter I have set forth the ways in which your submission of June 7, 1973, neither constitutes such a plan in form nor shows promise of being an acceptable one in substance. Therefore, if by November 30, 1973, I have not received a satisfactory commitment to comply with Title VI, as set forth at the beginning of this letter, I will have no alternative but to initiate enforcement

action to secure compliance with Title VI by Mississippi's State System of higher education. It should be noted that it will be our policy to release copies of your revised plan to members of the public if we are asked to do so. I would appreciate receiving three copies of your response.

If you have any questions, please do not hesitate to contact me, Dr. Mary Lepper, Director of the Higher Education Division of OCR, or Mr. Burton Taylor, Chief, Policy and Planning, Higher Education Division. My telephone number if (202) 963-5047, Dr. Lepper's is (202) 245-1843, and Mr. Taylor's is (202) 963-7993. After November 16, Mr. Taylor may be reached at (202) 245-7220.

Sincerely yours,

/s/ Peter E. Holmes

PETER E. HOLMES
Director
Office for Civil Rights

cc: Honorable William L. Waller
Dr. E. E. Thrash
Presidents, Mississippi Institutions of Higher Education
HEW Regional Director
HEW Regional Attorney
Regional Civil Rights Director

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Table 1
PROGRAM DUPLICATION, BY DEGREE LEVEL, BETWEEN GROUPED HISTORICALLY BLACK AND GROUPED HISTORICALLY WHITE INSTITUTIONS (BY HEGIS DISCIPLINE)

	Historically Black (3)	Historically White (5)
Bachelors Level		
Duplicated Programs	51	51
Total Programs	59	147
Percent of Duplication	86	35
Masters Level		
Duplicated Programs	28	28
Total Programs	32	116
Percent of Duplication	87	24
Specialist Level		
Duplicated Programs	10	10
Total Programs	11	24
Percent of Duplication	91	42
Doctoral Level		
Duplicated Programs	0	0
Total Programs	1	45
Percent of Duplication	0	0

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Table 2
PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (MSU and JSU)* B	M	S	D
0502	Accounting	X*	X*		
0504	Banking and Finance	X*			
0506	Business Administration	X*	X*		
0506	Management	X*			
0509	Marketing	X*			
0514	Secretarial Studies	X*			
0517	Economics		X*		
0701	Computer Sciences, general	X*	X*		
0802	Elementary Education	X*	X*	X*	
0803	Secondary Education	X*	X*	X*	
0807	Adult Education		X*		
0808	Special Education	X*	X*	X*	
0826	Student Personnel		X*	X*	
0827	Educational Administration		X*	X*	
0831	Art Education	X*			
0832	Music Education	X*	X*		
0835	Physical Education	X	X*		
0838	Business Education	X*	X*	X*	
0839	Industrial Arts, Vocational, and Technical Education	X*	X*		
1002	Art	X			
1102	French	X			
1103	German	X			
1105	Spanish	X			
1223	Medical Lab Technologies	X*			

Table 2 – Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (MSU and JSU)*			
		B	M	S	D
1501	English	X	X*		
1701	Mathematics	X	X*		
1902	Physics	X			
1905	Chemistry	X	X*		
2001	Psychology	X			
2102	Public Policy and Administration		X*		
2104	Social Work and Helping Services	X*			
2204	Economics	X			
2205	History	X	X*		
2206	Geography	X			
2207	Political Science	X	X*		
2208	Sociology	X	X*		
	Duplicated Programs, Total	31	21	6	0
	Unnecessarily Duplicated Programs, Total	16	21	6	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2 – Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (UM and JSU)*			
		B	M	S	D
0401	Biology, general	X	X*		
0502	Accounting	X*	X*		
0504	Banking and Finance	X*			
0506	Business Management and Administration	X*	X*		
0509	Marketing	X*			
0514	Secretarial Studies	X*			
0517	Economics		X*		
0701	Computer Sciences, general	X*			
0802	Elementary Education	X*	X*	X*	
0803	Secondary Education	X*	X*	X*	
0808	Special Education	X*	X*	X*	
0823	Early Childhood K-3		X*	X*	
0826	Guidance and Counseling		X*	X*	
0827	Educational Administration and Supervision		X*	X*	
0830	Reading Education		X*	X*	
0831	Art Education	X*	X*		
0832	Music Education	X*	X*		
0835	Health, Physical Education, and Recreation	X	X*	X*	
0838	Business Education	X*	X*	X*	
0842	Educational Media		X*		
1002	Art	X*			
1102	French	X			
1103	German	X			
1105	Spanish	X			

Table 2—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (UM and JSU)*			
		B	M	S	D
1215	Medical Records Administration	X*			
1223	Medical Lab Technologies	X*			
1501	English	X	X*		
1701	Mathematics	X	X*		
1902	Physics	X			
1905	Chemistry	X	X*		
2001	Psychology	X			
2102	Public Administration		X*		
2104	Social Work	X*			
2105	Law Enforcement and Corrections	X*			
2204	Economics	X			
2205	History	X	X*		
2207	Political Science	X	X*		
2208	Sociology	X	X*		
	Duplicated Programs, Total	31	23	9	0
	Unnecessarily Duplicated Programs, Total	16	23	9	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (USM and JSU)*			
		B	M	S	D
0401	Biology, general	X	X*		
0502	Accounting	X*	X*		
0504	Banking and Finance	X*			
0506	Business Administration	X*	X*		
0509	Marketing and Purchasing	X*			
0517	Economics		X*		
0701	Computer Science, general	X*	X*		
0802	Elementary Education	X*			
0803	Secondary Education	X*			
0807	Adult Education		X*		
0808	Special Education	X*	X*	X*	
0826	Student Personnel		X*	X*	
0827	Educational Administration and Supervision		X*	X*	
0830	Reading Education		X*	X*	
0831	Art Education	X*	X*		
0832	Music Education	X*	X*		
0834	Science Education	X*	X*	X*	
0835	Physical Education	X	X*	X*	
0838	Business Education	X*	X*	X*	
0839	Industrial Arts, Vocational, and Technical Education	X*	X*		
0842	Educational Media		X*		
1002	Art	X			
1102	French	X			
1103	German	X			
1105	Spanish	X			

Table 2 – Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (USM and JSU)* B	M	S	D
1215	Medical Records Administration	X*			
1223	Medical Lab Technologies	X*			
1501	English	X	X*		
1701	Mathematics	X	X*		
1902	Physics	X			
1905	Chemistry	X	X*		
2001	Psychology	X			
2104	Social Work and Helping Services	X*			
2105	Law Enforcement and Corrections	X*			
2201	Social Sciences, general	X*			
2204	Economics	X			
2205	History	X	X*		
2206	Geography	X			
2207	Political Science	X	X*		
2208	Sociology	X	X*		
2407	Industrial Technology	X*			
	Duplicated Programs, Total	35	23	7	0
	Unnecessarily Duplicated Programs, Total	19	23	7	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2 – Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (DSU and MVSU)* B	M	S	D
0401	Biology, general	X			
0502	Accounting	X*			
0506	Business Management and Administration	X*			
0514	Office Administration	X*			
0802	Elementary Education	X*	X*		
0803	Secondary Education	X*			
0831	Art Education	X*			
0832	Instrumental Music Education	X*			
0832	Music Education	X*			
0833	Mathematics Education	X*			
0834	Science Education	X*			
0835	Physical Education	X			
0838	Business Education	X*			
1002	Art	X			
1212	Physical Therapy	X*			
1223	Medical Lab Technologies	X*			
1501	English	X			
1506	Speech	X*			
1701	Mathematics	X			
1902	Physics	X			
1905	Chemistry	X			
2104	Social Work and Helping Services	X*			

Table 2—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (DSU and MVSU)*			
		B	M	S	D
2105	Criminal Justice	X*			
2201	Social Science	X*			
2205	History	X			
2207	Political Science	X			
2208	Sociology	X			
	Duplicated Programs, Total	27	1	0	0
	Unnecessarily Duplicated Programs, Total	17	1	0	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (USM and ASU)*			
		B	M	S	D
0401	Biology, general	X			
0502	Accounting	X*			
0506	Business Administration	X*			
0701	Computer and Information Sciences, general	X*			
0802	Elementary Education	X*			
0808	Special Education	X*			
0832	Music Education	X*			
0835	Physical Education	X			
0837	Health Education	X*			
0838	Business Education	X*			
0839	Industrial Arts, Vocational, and Technical Education	X*			
1203	Nursing	X*			
1212	Physical Therapy	X*			
1215	Medical Records Administration	X*			
1223	Medical Technology	X*			
1301	Home Economics Education	X*			
1501	English	X			
1701	Mathematics	X			
1905	Chemistry	X			
2201	Social Sciences, general	X*			
2204	Economics	X			

Table 2 – Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

HEGIS	Program	Duplicated Programs (USM and ASU)*			
		B	M	S	D
2205	History	X			
2207	Political Science	X			
2407	Industrial Technology	X*			
	Duplicated Programs, Total	24	0	0	0
	Unnecessarily Duplicated Programs, Total	16	0	0	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

UNITED STATES' EXHIBIT 481

Table 3

SUMMARY OF PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

MSU and JSU

	MSU				JSU			
Duplicated	B	M	S	D	B	M	S	D
Programs	31	21	6	0	31	21	6	0
Total Programs	102	69	9	24	46	30	11	1
Percent Duplicated	30	30	67	0	67	70	54	0

UM and JSU

	UM				JSU			
Duplicated	B	M	S	D	B	M	S	D
Programs	31	23	9	0	31	23	9	0
Total Programs	87	67	17	21	46	30	11	1
Percent Duplicated	35	34	52	0	67	77	82	0

USM and JSU

	USM				JSU			
Duplicated	B	M	S	D	B	M	S	D
Programs	35	23	7	0	35	23	7	0
Total Programs	93	59	15	15	46	30	11	1
Percent Duplicated	38	39	47	0	76	77	64	0

DSU and MVSU

	DSU				MVSU			
Duplicated	B	M	S	D	B	M	S	D
Programs	27	1	0	0	27	1	0	0
Total Programs	54	21	4	1	35	2	0	0
Percent Duplicated	50	5	0	0	77	50	0	0

Table 3—Continued

SUMMARY OF PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

USM and ASU

	USM				ASU			
	B	M	S	D	B	M	S	D
Duplicated Programs	24	0	0	0	24	0	0	0
Total Programs	93	59	15	15	44	3	0	0
Percent Duplicated	26	0	0	0	55	0	0	0

UNITED STATES' EXHIBIT 482

Table 4

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS DEGREE-GRANTING CENTERS (BY HEGIS DISCIPLINE)

HEGIS	Program	Duplicated Programs (MSU-J and JSU*)			
		B	M	S	D
0502	Accounting	X*	X*		
0504	Banking and Finance	X*			
0506	Business Management and Administration	X*	X*		
0509	Marketing and Purchasing	X*			
0517	Business Economics		X*		
0802	Elementary Education, general	X*	X*	X*	
0803	Secondary Education, general	X*	X*	X*	
0807	Adult and Continuing Education		X*		
0808	Special Education, general	X*	X*	X*	
0826	Student Personnel		X*	X*	
0827	Educational Administration		X*	X*	
0832	Music Education		X*		
0838	Business, Commerc and Distributive Education	X*	X*	X*	
0839	Industrial Arts, Vocational, and Technical Education	X*	X*		
0842	Educational Media		X*		
1002	Art	X			
1004	Music	X			
1102	French	X			
1105	Spanish	X			

Table 4—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS DEGREE-GRANTING CENTERS (BY HEGIS DISCIPLINE)

HEGIS	Program	Duplicated Programs (MSU-J and JSU*) B	M	S	D
1501	English, general	X	X*		
1701	Mathematics, general	X	X*		
1902	Physics, general	X			
2001	Psychology, general	X			
2102	Public Administration		X*		
2104	Social Work and Helping Services	X*			
2204	Economics	X			
2205	History	X	X*		
2206	Geography	X			
2207	Political Science and Government	X	X*		
2208	Sociology	X	X*		
	Duplicated Programs, Total	23	19	6	0
	Unnecessarily Duplicated Programs, Total	10	19	6	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 4—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS DEGREE-GRANTING CENTERS

HEGIS	Program	Duplicated Programs (UM-J and JSU*) B	M	S	D
0401	Biology, general	X	X*		
0502	Accounting	X*	X*		
0504	Banking and Finance	X*			
0506	Business Administration and Management	X*	X*		
0509	Marketing and Purchasing	X*			
0514	Secretarial Studies	X*			
0517	Business Economics		X*		
0802	Elementary Education, general	X*	X*	X*	
0803	Secondary Education, general	X*	X*	X*	
0808	Special Education, general	X*	X*	X*	
0823	Pre-Elementary Education		X*	X*	
0826	Student Personnel		X*	X*	
0827	Educational Administration		X*	X*	
0830	Reading Education		X*	X*	
0831	Art Education	X*	X*		
0832	Music Education	X*	X*		
0835	Physical Education		X*	X*	
0838	Business, Commerce and Distributive Education	X*	X*	X*	
1002	Art	X			
1004	Music	X			
1103	German	X			

Table 4—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS
DEGREE-GRANTING CENTERS

HEGIS	Program	Duplicated Programs (UM-J and JSU*) B	M	S	D
1501	English, general	X	X*		
1701	Mathematics, general	X	X*		
1902	Physics, general	X			
1905	Chemistry, general	X	X*		
2001	Psychology, general	X			
2102	Public Administration		X*		
2105	Law Enforcement and Corrections	X*			
2204	Economics	X			
2205	History	X	X*		
2206	Geography	X			
2207	Political Science	X	X		
2208	Sociology	X	X		
	Duplicated Programs, Total	26	23	9	0
	Unnecessarily Duplicated Programs, Total	12	23	9	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 4—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS
DEGREE-GRANTING CENTERS

HEGIS	Program	Duplicated Programs (USM-J and JSU*) B	M	S	D
0701	Computer and Information Sciences, general	X*	X*		
0807	Adult and Continuing Education		X*		
0808	Special Education, general	X*	X*	X*	
0827	Educational Administration		X*	X*	
0832	Music Education	X*	X*		
0834	Science Education	X*	X*	X*	
0835	Physical Education	X	X*	X*	
1004	Music	X			
1105	Spanish	X			
1501	English, general	X	X*		
2104	Social Work and Helping Services	X*			
2105	Law Enforcement and Corrections	X*			
2201	Social Sciences, general	X*			
2205	History	X	X*		
2206	Geography	X			

Table 4 – Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS
DEGREE-GRANTING CENTERS

HEGIS	Program	Duplicated Programs (USM-J and JSU*) B	M	S	D
2207	Political Science and Government	X	X*		
2407	Industrial Technology	X*			
	Duplicated Programs, Total	15	10	4	0
	Unnecessarily Duplicated Programs, Total	8	10	4	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 4 – Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS
DEGREE-GRANTING CENTERS

HEGIS	Program	Duplicated Programs (USM-N and ASU*) B	M	S	D
0506	Business Management and Administration	X*			
0802	Elementary Education, general	X*	X*		
0803	Secondary Eucation, general	X*	X*		
0838	Business, Commerce and Distributive Education	X*			
1501	English, general	X			
1701	Mathematics, general	X			
2201	Social Sciences, general	X*			
2205	History	X			
2207	Political Science and Government	X			
	Duplicated Programs, Total	9	2	0	0
	Unnecessarily Duplicated Programs, Total	5	2	0	0

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

UNITED STATES' EXHIBIT 483

Table 5

SUMMARY OF PROGRAM DUPLICATION IN DEGREE-GRANTING CENTERS

MSU-J and JSU

	MSU-J				JSU			
Duplicated	B	M	S	D	B	M	S	D
Programs	23	19	6	0	23	19	6	0
Total Programs	58	43	10	15	46	30	11	1
Percent Duplicated	40	44	60	0	50	63	54	0

UM-J and JSU

	UM-J				JSU			
Duplicated	B	M	S	D	B	M	S	D
Programs	26	23	9	0	26	23	9	0
Total Programs	48	45	15	19	46	30	11	1
Percent Duplicated	54	51	60	0	56	77	82	0

USM-J and JSU

	USM-J				JSU			
Duplicated	B	M	S	D	B	M	S	D
Programs	15	10	4	0	15	10	4	0
Total Programs	34	28	9	8	46	30	11	1
Percent Duplicated	44	36	44	0	33	33	36	0

USM-N and ASU

	USM-J				ASU			
Duplicated	B	M	S	D	B	M	S	D
Programs	9	2	0	0	9	2	0	0
Total Programs	14	6	0	0	44	3	0	0
Percent Duplicated	64	33	0	0	20	66	0	0

UNITED STATES' EXHIBIT 484

Table 5A

SUMMARY OF PROGRAM DUPLICATION BETWEEN JACKSON STATE AND THE UNIVERSITIES CENTER

	B	M	S	D
Programs at Jackson State Duplicated at the Universities Center	35	27	10	0
Total Programs at Jackson State	46	30	11	1
Percent Duplication	76	90	91	0

UNITED STATES' EXHIBIT 485

Table 6

PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY (By Discipline)

HEGIS	Major Field	HEGIS	Discipline Name
0400	Life Sciences	0401	Biology
		0402	Botany
		0407	Zoology
0800	Education	0835	Health and Physical Education
1000	The Arts	1001	Art
		1002	Art
		1003	Art History
		1004	Music
		1005	Music
		1006	Music History
		1007	Theater
1100	Foreign Languages	1102	French
		1103	German
		1104	Italian
		1105	Spanish
		1106	Russian
		1109	Latin
		1110	Classical Languages
1500	Belles Lettres	1501	English
		1509	Philosophy
1700	Mathematics	1701	Mathematics

Table 6 – Continued

PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY (By Discipline)

HEGIS	Major Field	HEGIS	Discipline Name
1900	Physical Science	1902	Physics
		1905	Chemistry
		1914	Geology
2000	Psychology	2001	Psychology
2200	Social Sciences	2202	Anthropology
		2204	Economics
		2205	History
		2206	Geography
		2207	Political Science
		2208	Sociology

UNITED STATES' EXHIBIT 486

Table 7
UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, BETWEEN GROUPED HISTORICALLY BLACK AND GROUPED HISTORICALLY WHITE INSTITUTIONS (BY HEGIS DISCIPLINE)

	Historically Black (3)	Historically White (5)
Bachelors Level		
Programs Unnecessarily Duplicated	34	34
Total Programs	59	147
Percent Duplicated Unnecessarily	58	23
Masters Level		
Programs Unnecessarily Duplicated	28	28
Total Programs	32	116
Percent Duplicated Unnecessarily	87	24
Specialist Level		
Programs Unnecessarily Duplicated	10	10
Total Programs	11	24
Percent Duplicated Unnecessarily	91	42
Doctoral Level		
Programs Unnecessarily Duplicated	0	0
Total Programs	1	45
Percent Duplicated Unnecessarily	0	0

UNITED STATES' EXHIBIT 487

Table 8
SUMMARY OF UNNECESSARY PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

MSU and JSU

	MSU				JSU			
Programs	B	M	S	D	B	M	S	D
Unnecessarily Duplicated	16	21	6	0	16	21	6	0
Total Programs	102	69	9	24	46	30	11	1
Percent Duplicated Unnecessarily	16	30	69	0	35	70	54	0

UM and JSU

	UM				JSU			
Programs	B	M	S	D	B	M	S	D
Unnecessarily Duplicated	16	23	9	0	16	23	9	0
Total Programs	87	67	17	21	46	30	11	1
Percent Duplicated Unnecessarily	18	34	52	0	34	77	82	0

USM and JSU

	USM				JSU			
Programs	B	M	S	D	B	M	S	D
Unnecessarily Duplicated	19	23	7	0	19	23	7	0
Total Programs	93	59	15	15	46	30	11	1
Percent Duplicated Unnecessarily	20	39	47	0	41	77	64	0

Table 8—Continued

SUMMARY OF UNNECESSARY PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

DSU and MVSU

	DSU				MVSU			
Programs	B	M	S	D	B	M	S	D
Unnecessarily Duplicated	17	1	0	0	17	1	0	0
Total Programs	54	21	4	1	35	2	0	0
Percent Duplicated Unnecessarily	31	5	0	0	48	50	0	0

USM and ASU

	USM				ASU			
Programs	B	M	S	D	B	M	S	D
Unnecessarily Duplicated	16	0	0	0	16	0	0	0
Total Programs	93	59	15	15	44	3	0	0
Percent Duplicated Unnecessarily	17	0	0	0	36	0	0	0

UNITED STATES' EXHIBIT 488

Table 9

SUMMARY OF UNNECESSARY PROGRAM DUPLICATION BETWEEN TWO TRADITIONALLY BLACK INSTITUTIONS AND FOUR DEGREE-GRANTING CENTERS

	B	M	S	D
JSU and MSU-J				
Programs at JSU Unnecessarily Duplicated at MSU-J	23	19	6	0
Total Programs at JSU	46	30	11	1
Percent Duplicated Unnecessarily	50	63	54	0
JSU and UM-J				
Programs at JSU Unnecessarily Duplicated at UM-J	26	23	9	0
Total Programs at JSU	46	30	11	1
Percent Duplicated Unnecessarily	56	77	82	0
JSU and USM-J				
Programs at JSU Unnecessarily Duplicated at USM-J	15	10	4	0
Total Programs at JSU	46	30	11	1
Percent Duplicated Unnecessarily	33	33	36	0
ASU and USM-N				
Programs at ASU Unnecessarily Duplicated at USM-N	9	2	0	0
Total Programs at ASU	44	3	0	0
Percent Duplicated Unnecessarily	20	66	0	0

UNITED STATES' EXHIBIT 489

Table 9A

SUMMARY OF UNNECESSARY PROGRAM DUPLICATION BETWEEN JACKSON STATE AND THE UNIVERSITIES CENTER

	B	M	S	D
Programs at Jackson State Unnecessarily Duplicated at the Universities Center	35	27	10	0
Total Programs at Jackson State	46	30	11	1
Percent Duplication	76	90	91	0

UNITED STATES' EXHIBIT 490

Table 10

DEGREE PROGRAMS, BY LEVEL, IN FIVE TRADITIONALLY WHITE AND THREE TRADITIONALLY BLACK INSTITUTIONS (1966)

	Traditionally White Institutions					Traditionally Black Institutions		
Level	UM*	MSU	USM	DSC	MSCW	JSC	Alcorn	MVSC
Bachelors	60	77	77	41	43	44	15	36
Masters	48	43	30	1	5	2	1	–
Doctorate	18	26	14	–	–	–	–	–
Totals	126	146	121	42	48	46	16	36

* Does not include programs in the School of Law and the School of Medicine in Jackson.

Source: The information in this table has been aggregated from data published in the following source: Strengthening Mississippi's Higher Education Through Diversification, Cooperation, and Coordination. A Report of a Study of the Role and Scope of Higher Educational Institutions in Mississippi. The Steering Committee of the Role and Scope Study and The Board of Trustees of Higher Learning 1966, pp. 22-50.

UNITED STATES' EXHIBIT 492

Table 12
DEGREE PROGRAMS, BY LEVEL, IN FIVE TRADITIONALLY WHITE AND THREE TRADITIONALLY BLACK INSTITUTIONS (MAY 1974)

	Traditionally White Institutions					Traditionally Black Institutions		
Level	UM	MSU	USM	DSU	MUW	JSU	ASU	MVSU
Bachelors	79	100	128	49	48	45	37	49
Masters	87	78	89	18	15	17	–	–
Specialist	11	13	24	3	7	11	–	–
Doctorate	39	50	31	–	–	–	–	–
Totals	216	241	272	70	70	73	37	49

Source: *Academic Program Inventory; State Universities of Mississippi.* Jackson, Mississippi: Board of Trustees of State Institutions of Higher Learning, May, 1975. *Programs Approved: January, 1973 Through August, 1980.* Jackson, Mississippi: Board of Trustees of State Institutions of Higher Learning.

UNITED STATES' EXHIBIT 494

Table 14
NEW DEGREE PROGRAMS, BY LEVEL, IN FIVE TRADITIONALLY WHITE AND THREE TRADITIONALLY BLACK INSTITUTIONS FROM MAY 1974 TO 1980

	Traditionally White Institutions					Traditionally Black Institutions		
Level	UM*	MSU	USM	DSU	MUW	JSU	ASU	MVSU
Bachelors	7	3	3	7	5	8	4	2
Masters	3	4	3	2	5	13	1	1
Specialist	4	–	3	2	–	1	–	–
Doctorate	–	3	0	1	1	1	–	–
Totals	14	10	9	12	11	23	5	3

* Does not include new programs in the School of Medicine in Jackson.

Source: *Programs Approved: January, 1973 Through August, 1980.* Jackson, Mississippi: Board of Trustees of State Institutions of Higher Learning. (Programs approved before May 1974 are not included in the above figures.)

UNITED STATES' EXHIBIT 496

Table 16
SUMMARY OF PROGRAMS, BY DEGREE LEVEL, IN FIVE TRADITIONALLY WHITE AND THREE TRADITIONALLY BLACK INSTITUTIONS IN 1981 (NUMBER OF OPTIONS)

	Traditionally White Institutions					Traditionally Black Institutions		
Level	UM*	MSU	USM	DSU	MUW	JSU	ASU	MVSU
Certificate	1	0	0	0	0	0	0	7
Associate	0	0	1	0	1	0	1	2
Bachelors	87	102	93	54	49	46	44	35
Masters	67	69	59	21	18	30	3	2
Specialist	17	9	15	4	0	11	0	0
Doctorate	21	24	15	0	1	1	0	0
Totals	193	204	183	79	69	88	48	46

* Does not include programs in the School of Medicine in Jackson.

Source: Academic Programs Inventory: State Universities of Mississippi. Jackson, Mississippi: Board of Trustees of State Institutions of Higher Learning, April, 1981. See Appendix B.

UNITED STATES' EXHIBIT 497

Table 17
AVERAGE NUMBER OF DEGREE PROGRAMS, BY DEGREE LEVEL, IN TRADITIONALLY WHITE AND TRADITIONALLY BLACK INSTITUTIONS IN 1981

	Traditionally White Institutions (5)		Traditionally Black Institutions (3)	
Level	Number of Programs	Average No. of Programs Per Institution	Number of Programs	Average No. of Programs Per Institution
Certificate	1	.2	7	2.3
Associate	2	.4	3	1.0
Bachelors	385	77.0	125	41.7
Masters	234	46.8	35	11.7
Specialist	45	9.0	11	3.7
Doctorate	61	12.2	1	.3
Totals	728		182	

UNITED STATES' EXHIBIT 498

Table 18
NUMBER OF MAJOR FIELDS (RANGE) IN WHICH DEGREES ARE OFFERED IN FIVE TRADITIONALLY WHITE AND THREE TRADITIONALLY BLACK INSTITUTIONS IN 1981

	Traditionally White Institutions					Traditionally Black Institutions		
Level	UM	MSU	USM	DSU	MUW	JSU	ASU	MVSU
Certificate	1	0	0	0	0	0	0	3
Associate	0	0	1	0	1	0	1	2
Bachelors	21	21	19	18	17	14	13	11
Masters	19	14	17	8	6	9	2	2
Specialist	2	1	3	1	0	1	0	0
Doctorate	12	7	10	1	1	1	0	0
Totals	55	43	50	28	25	25	16	18

Source: Academic Programs Inventory: State Universities of Mississippi. Jackson, Mississippi: Board of Trustees of State Institutions of Higher Learning, April, 1981. See Appendix B.

UNITED STATES' EXHIBIT 499

Table 19
AVERAGE NUMBER OF MAJOR FIELDS (RANGE) IN WHICH DEGREES ARE OFFERED IN TRADITIONALLY WHITE AND TRADITIONALLY BLACK INSTITUTIONS IN 1981

	Traditionally White Institutions (5)		Traditionally Black Institutions (3)	
Level	Number of Major Fields	Average No. of Major Fields Per Institution	Number of Major Fields	Average No. of Major Fields Per Institution
Certificate	1	.2	3	1
Associate	2	.4	3	1
Bachelors	96	19.2	38	12.7
Masters	64	12.8	13	4.3
Specialist	7	1.4	1	1
Doctorate	31	6.2	1	1
Totals	201		59	

UNITED STATES' EXHIBIT 500

Table 20

PROGRAMS ELIGIBLE FOR PROFESSIONAL ACCREDITATION AND PROGRAMS ACCREDITED, BY DEGREE LEVEL AND TYPE (TRADITIONALLY BLACK OR WHITE)

	Traditionally Black Institutions (3) (ASU, JSU, MVSU)			Traditionally White Institutions (5) (DSU, MSU, MUW, UM, USM)		
Level	Number Eligible	Number Accredited	Percent	Number Eligible	Number Accredited	Percent
Bachelors	24	9	38	82	59	72
Masters	12	7	58	56	39	70
Specialist	6	6	100	26	23	89
Doctorate	–	–	–	22	20	88
TOTAL	42	22	52	186	141	76

* Includes only baccalaureate or higher.

Source: See Appendix C for the data base from which this table was constructed.

UNITED STATES' EXHIBIT 501

TABLE 21

PROGRAMS ELIGIBLE FOR PROFESSIONAL ACCREDITATION AND PROGRAMS ACCREDITED BY INSTITUTION AND DEGREE LEVEL*

(December 1980)

	ASU			DSU			JSU			MSU		
Level	Number Eligible	Number Accredited	Percent	Number Eligible	Number Accredited	Percent	Number Eligible	Number Accredited	Percent	Number Eligible	Number Accredited	Percent
Bachelors	8	2	25	9	3	33	8	6	75	27	23	85
Masters	2	0	0	9	7	78	8	7	88	11	9	82
Specialist	–	–	–	6	5	83	6	6	100	6	6	100
Doctorate	–	–	–	–	–	–	–	–	–	7	7	100
TOTAL	10	2	20	24	15	63	22	19	86	51	45	88

* Includes only baccalaureate or higher.

Source: See Appendix C for the data base from which this table has been constructed.

TABLE 21 – Continued
PROGRAMS ELIGIBLE FOR PROFESSIONAL ACCREDITATION AND PROGRAMS ACCREDITED BY INSTITUTION AND DEGREE LEVEL*
(December 1980)

	MUW			MVSU			UM			USM		
Level	Number Eligible	Number Accredited	Percent	Number Eligible	Number Accredited	Percent	Number Eligible	Number Accredited	Percent	Number Eligible	Number Accredited	Percent
Bachelors	13	8	62	8	1	13	18	15	83	15	10	66
Masters	8	2	15	2	0	0	14	9	64	14	12	86
Specialist	2	0	0	–	–	–	6	6	100	6	6	100
Doctorate	–	–	–	–	–	–	10	8	80	5	5	100
TOTAL	23	10	43	10	1	10	48	38	79	40	33	83

* Includes only baccalaureate or higher.

Source: See Appendix C for the data base from which this table has been constructed.

UNITED STATES' EXHIBIT 635

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI GREENVILLE DIVISION

Civil Action No. GC 75-9-K

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

CLIFF FINCH, ET AL., DEFENDANTS

ANSWERS OF DEFENDANT, BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING TO THE UNITED STATES, PLAINTIFF-INTERVENORS THIRD INTERROGATORIES

COMES NOW the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, and pursuant to the provisions of Rule 33, F. R. Civ. P., would answer the third [sic] interrogatories of the United States, plaintiff-intervenors herein, as follows:

1. Please give the date on which the first black student(s) were admitted to each of the historically white universities and the Medical Center. Indicate whether the Board of the particular institution admitted the first black student voluntarily, or acted pursuant to a court order. If acting under court order, give the court, the date of the decree or order, and the civil action number of the case (in

the alternative give the citation for the report of the opinion and order in the case).

ANSWER:

The information requested in interrogatory 1 is contained in material furnished by the respective institutions.

UNITED STATES' EXHIBIT 635

j. FULL-TIME EQUIVALENT OF FACULTY BY RACE SECOND SEMESTER, SPRING 1977

JACKSON BRANCH

	White	Black
FTE of faculty	7 1/12	0

TUPELO BRANCH

	White	Black
FTE of faculty	16 10/12	0

Response provided by Mr. Maurice Inman who is administratively responsible to Vice Chancellor Harvey S. Lewis.

4. Interrogatory not responded to by direction.

UNITED STATES' EXHIBIT 636

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 75-9-K

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM WINTER, ET AL., DEFENDANTS

DEFENDANT BOARD OF TRUSTEES ANSWERS TO
UNITED STATES, PLAINTIFF-INTERVENOR'S FIRST
REQUEST FOR ADMISSIONS

Pursuant to Rule 36, Federal Rules of Civil Procedure, the defendants herewith submit the following as their answers to United States, plaintiff-intervenor's first request for admission:

REQUEST NO. 1:

Management and control of all Mississippi public senior colleges and universities has since 1932 been vested in the Board of Trustees of State Institutions of Higher Learning (hereinafter referred to as the "Board of Trustees").

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered one (1).

REQUEST NO. 2:

The Board of Trustees was created by statute in 1932; in 1944 it became a constitutional board. [1932 Miss. Laws ch. 127; Miss. Const. art. 8, § 213-A]

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered two (2); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of 1932 *Miss. Laws* ch. 127; *Miss Const.* art 8, § 213-A.

REQUEST NO. 70:

During the 1978-79 academic year, the student enrollment of Delta State University was approximately 23 percent black.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventy (70).

REQUEST NO. 71:

During the 1978-79 academic year, the student enrollment of Mississippi University for Women was approximately 21 percent black.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventy-one (71).

REQUEST NO. 72:

During the 1978-79 academic year, the student enrollment of the University of Southern Mississippi was approximately 11 percent black.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventy-two (72).

REQUEST NO. 73:

The Board of Trustees has never selected a white individual as president or chief executive of a traditionally-black senior college or university.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventy-three (73).

REQUEST NO. 74:

The Board of Trustees has never selected a black individual as president or chief executive of a traditionally-white senior college or university.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventy-four (74).

REQUEST NO. 75:

Each public senior college and university under the management and control of the Board of Trustees, by their agents or predecessors, in consideration for federal financial assistance, has agreed to comply with Title VI of the Civil Rights Act. of 1964 (42 U.S.C. § 2000d *et seq.*) and with all requirements imposed by or pursuant to the regulations of the U.S. Department of Health, Education and Welfare (45 C.F.R. Part 80) issued pursuant to that Title.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventy-five (75).

REQUEST NO. 76:

Attachments 3 through 10 hereto contain true and accurate copies of the first Assurance of Compliance forms (Form 441) signed by each public senior college and university, by their agents or predecessors in consideration for federal financial assistance.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventy-six (76).

REQUEST NO. 77:

For the purposes of this case, Attachments 3 through 10 may be introduced into evidence to show the truth of the matters therein.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventy-seven (77).

Respectfully submitted,

BILL ALLAIN, ATTORNEY GENERAL
STATE OF MISSISSIPPI
ED DAVID NOBLE, JR.
ASSISTANT ATTORNEY GENERAL

/s/ ED DAVID NOBLE, JR.

Ed David Noble, Jr.

ATTACHMENT 3

(Grant No: T15 MH12907)

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

University of Southern Mississippi (hereinafter called
(Name of Applicant) the "Applicant")

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health, Education, and Welfare (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar

services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated April 5, 1972 University of Southern Mississippi
(Applicant)

/s/ WILLIAM D. MCCAIN
(President, Chairman of board, or comparable authorized official)

Box 5157, Southern Station

Hattiesburg, Mississippi 39401
(Applicant's mailing address)

UNITED STATES' EXHIBIT 683

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MISSISSIPPI

MISSION STATEMENTS

AN OFFICIAL EXPLANATION
Approved March 25, 1982

The citizens of the State of Mississippi have a system of higher education available to them that provides access to higher education almost literally in their back yards. In a state with just 2½ million there are

- 8 public universities which include a medical school, a dental school, a law school, a pharmacy school, and a college of veterinary medicine.
- 16 public junior colleges
- 8 private senior colleges
- 6 private junior colleges
- 6 Bible colleges
- 2 seminaries

If one considers just the public higher education opportunities available, except for a couple of small areas, a public higher education institution is less than 50 miles away from all citizens.

The State of Mississippi has made a monumental commitment over the years to provide such access. A wide variety of academic programs was also made available to these various locations. In addition, the state has a Graduate and Professional Degree Scholarship Program that

assists students who wish to pursue a program in another state that is not offered in this state.

This discussion will center around those institutions under the governance or control of the Board of Trustees of State Institutions of Higher Learning (the State College Board).

One of the problems one faces with the philosophy of access to everything for everyone is how to do it all with quality. Although the Mississippi Legislature had been very generous to higher education in the last ten years, the fact remained that with Mississippi's low tax base, not enough dollars were available to keep the institutions under the Board at the level of quality that they needed to be. The three comprehensive universities, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi, were finding themselves hard pressed to be competitive with other universities in the South, much less nationally.

The Board began seriously wrestling with this problem nearly a decade ago. For a variety of reasons, no plan for resolving this dilemma could be agreed upon.

Two major events occurred within the past year that gave new impetus to taking some action on mission statements. Firstly, a series of consultant reports all repeated the same recurring theme that the Board of Trustees needed to establish a mission statement for each of the universities under its control. A direction for excellence for each had to be established. The idea that all eight universities could do all things at all levels at a desirable level of quality had to be abandoned. Secondly, the state took back $16 million last July that it had said the institution could have for their operations. The state was and is in a financial bind.

A year ago Mrs. Miriam Q. Simmons, as president of the Board, called for a volunteer committee of Board

members to work with her on the issue of mission statements. That committee worked diligently with its professional staff for eight months hammering out the details of a workable set of Mission Statements for the universities. Finally, last November 19, 1981, the committee was ready for its recommendation to the full Board. As you are aware, the Board passed the committee's recommendations.

This was a monumental step in the life of higher education in the State of Mississippi. There has been much praise for this action taken by the Board and criticism has been voiced. It has been apparent that most of the criticism has come from a lack of understanding or from misinterpretation. It is the hope of the Board of Trustees that this explanation will provide understanding and clarity.

Clarification needs to be offered to some degree on one bit of terminology. Another term that is used interchangeably with Mission Statements is Role and Scope. They both mean the same thing. They both express the extent of involvement that the Board of Trustees expects and will allow by an institution. As the terms indicate, it is the establishment of the mission of an institution. It is the defining of the role that an institution will play and the scope (bachelor's, master's doctorates) of the programs that it will offer.

The purpose of the Mission Statements is not to hamper, to hurt, or to demean but rather to enhance the quality and productivity of institutions. It must be emphasized at this point and reiterated that the Board of Trustees has responsibility for eight public universities. Its viewpoint, as was intended by its constitutional creation, must consider the individual institution, but even more importantly, it must consider all eight combined in relation to the needs of the State of Mississippi. The critical statement to remember is that the overall aim is the attainment of the

highest quality possible within the resources that are available.

The Board realized that one of the best ways to use limited resources available was to establish specific areas or parameters on which an institution would place priorities for funding.

An analogy can be found in this illustration: A man owns twenty vintage automobiles that need work. He has the desire to gain a reputation for being a vintage car owner who believes in developing and having high-quality, sought-after vintage cars, but he has only $5,000 a year to spend on his twenty vintage cars. He can spread the $5,000 evenly across the twenty cars (about $250 each per year) and hope that people will accept the resulting product as high quality. Obviously, a $250 per year expenditure on a vintage car will not cause that car to win many prizes in competition. However, what if he identifies one or two of his cars as the ones on which he will concentrate most of his resources because he feels that with that concentration they will be recognized as being of very high quality. He obviously could attain his desire to be recognized as a vintage car owner who believes in developing and having high-quality, sought-after vintage cars. But, you ask, what about those other vintage cars? Does he let them sit and rust away to nothing? No, he would use his remaining resources to keep each one well maintained and running nicely. They might not be as prepared for long trips, and the owner probably would not try to enter them into big-time vintage car competition. However, they would be nice enough to cause a lot of people to want them, and they certainly would meet the needs of most people.

The discussion concerning the Mission Statements should begin by talking about the state's three comprehensive universities, Mississippi State University, the University of Mississippi, and the University of Southern Missis-

sippi. They are identified as comprehensive, not only because of their size, but because of the wide array of professional and graduate programs (particularly doctoral programs) that are available.

The Board recognized that each institution had particular identifiable strengths, areas or disciplines the Board felt that that institution could build on and could make competitive with comparable institutions at least in this region, which runs from Maryland to Texas, and, hopefully, with institutions nationally. In essence, the Board was assigning leadership responsibilities for certain disciplines to each of the comprehensive universities. Leadership responsibility means literally what it says. Each of those three institutions is expected to take whatever steps are necessary to cause programs in the disciplines assigned to them to step forward and to compete with the best.

The leadership responsibilities that were assigned to those three institutions are as follows:

MISSISSIPPI STATE UNIVERSITY

Agriculture and Forestry
Architecture
Biological Science
Engineering
Veterinary Medicine

pursue the highest level of research in this discipline. That institution is expected to conduct the bulk of the state's research in this area. Its library resources in the Physical Sciences are expected to measure up in support of its highest degree offering in the Physical Sciences. It is expected that the faculty and students (particularly graduate students) found in the Physical Sciences at the University would be sought after nationally. You can transfer this example to each of the assigned leadership areas.

As a part of the Mission Statements, what else is expected of the comprehensive universities? Of the organized research done at the eight universities, these three universities are charged with being actively involved in and conducting most of this kind of research. They are expected to be the centers for the development of new knowledge and the expansion of existing research.

The comprehensive universities are expected to continue to provide off-campus credit and non-credit activities. It should be noted that more and more of these activities will have to be cost effective.

One final note should be made on the assignment of leadership responsibilities. The Board made it clear that the institution to which an assignment has been made has to meet the challenge of that assignment. That institution must continue to be or must become the competitive leader in its assigned fields. If it cannot meet that challenge, the leadership responsibility may be reassigned.

The next designation by the Board of Trustees involves the term Urban University and pertains only to Jackson State University. This is not a new term for Jackson State. It has been used for some time now and, as a matter of fact, was initially proposed by that institution's president several years ago.

Jackson State is the only public university in the state that is located in a true metropolitan or urban area. Jack-

son State presently offers a complete array of baccalaureate and master's degree programs and has entered the doctoral arena with a program in Early Childhood Education.

The Board of Trustees expects Jackson State University to develop a broader mission for the University than it now employs; i.e., one that will be directly related to its urban role. It is expected to develop new programs and to make changes in some existing programs where necessary in order to more directly address the concerns and needs of an urban setting.

It is necessary at this point to clarify a major misconception that has occurred regarding the urban designation. Jackson State is not limited to the Jackson area in its student recruitment. The Mission Statements in no way intend to designate locations only from which students may be recruited.

The institution is directed to continue to upgrade and enhance the overall quality of its activities. The Board's intent is that Jackson State through quality enhancement will be more attractive to the entire citizenry of the Jackson area. The result should be a greater reliance by that urban population upon Jackson State University for its higher education needs. It is the Board's conviction that for the desired level of quality to be attained, the institution must have a lesser dependence upon those students whose chances of success at a university are small.

Jackson State is expected to become more involved in organized research that is directly related to an urban setting, and particularly, to Jackson, Mississippi; i.e., in transportation, housing, etc. Jackson State may offer off-campus credit activities with Board permission and when demand warrants.

It can be emphatically stated that the Mission Statements established for Jackson State University are intended

to improve Jackson State University and to cause that university to become a more viable higher education entity for the metropolitan area of Jackson and for the state as a whole.

The third designation in the Mission Statements involves Regional Universities. The institutions in this category are Alcorn State University, Delta State University, Mississippi University for Women, and Mississippi Valley State University. The title Regional Universities is not intended to indicate that an institution is to become less of an institution, but in fact more, than it was prior to the Board's decision as far as quality is concerned.

These institutions are expected to concentrate their resources at the baccalaureate level. Although each will continue to offer some limited graduate programs, their primary emphasis is expected to be at the undergraduate level.

One of the terrible misconceptions that has overtaken the nigher education community in general is that to have quality one must have a large number of graduate programs available. One could cite many examples of institutions that are recognized for high quality that do not have many, if any, graduate programs. An example close to home is Millsaps College in Jackson.

All four Regional Universities are expected to develop an undergraduate offering of the highest quality. Alcorn State University and Mississippi Valley State University will continue to offer their present graduate programs in Education. Alcorn State University offers the master's in Elementary and Secondary Education. Mississippi Valley provides access to a master's program in Elementary Education. However, as a demonstration of the quality of these programs, the Board has mandated that accreditation must be earned by 1984 if the programs are to continue.

Alcorn State's master's program in General Agriculture and Mississippi Valley's master's program in Environmental Health will be closely scrutinized through the program review process.

Mississippi University for Women may continue to offer its graduate programs in Home Economics within the limited areas of Home Economics Education, Merchandising, Child Development, and Textiles. Graduate work in Education may continue to be offered contingent upon gaining accreditation by 1984.

Delta State University may continue its graduate degree programs in Education through the education specialist level because of its strong reputation in this area and because all of these programs have already gained accreditation. Delta State's doctoral program in Education will be reviewed in August of 1984 to determine its continuance. The master's program in Business at Delta State University must gain accreditation by 1986 in order to continue.

No additional doctoral programs will be established at Regional Universities.

The Board's basic intention for Regional Universities is to offer a basic baccalaureate program of the highest quality. Where graduate programs have been allowed, they too are expected to be of the highest quality and to gain accreditation in instances where it is available. The very nature of graduate programs at small institutions causes those programs to be small and heightens the possibility of less quality than is desired as well as an extraordinary demand on resources.

The vintage cars chosen at the Regional Universities were those called undergraduate programs as opposed to a wide array of graduate programs.

Alcorn State University is expected to continue its nursing program activities in Natchez as well as its Board-approved courses in Vicksburg. Mississippi Valley State

University is encouraged to continue its program offerings in Greenwood with Board-approved courses. Only extraordinary circumstances would warrant the involvement of these two institutions at locations other than those mentioned and then only with Board approval. Mississippi University for Women should offer off-campus credit activities only with Board approval and in highly unusual circumstances. Delta State University should continue its off-campus credit activities in the region assigned to that institution. Non-credit activities by these four institutions should be conducted on-campus unless an extraordinary need exists.

An essential element in the Mission Statements is the review of all existing academic programs. The review provides the Board with the

UNITED STATES' EXHIBIT 685

MISSISSIPPI CURRICULUM STUDY: A REPORT FOR THE UNITED STATES DEPARTMENT OF JUSTICE

March 10, 1987

Dr. Clifton F. Conrad
Professor of Higher Education
Associate Dean for Academic Affairs
College of Education
University of Arizona

INTRODUCTION

In order to bring focus to this investigation of public post-secondary education in Mississippi, this study was organized around two central research questions: (1) Based on the examination of current academic program offerings, is there a dual system of higher education in Mississippi? and (2) Is there program or curricular inequality between the traditionally white and traditionally black institutions in Mississippi? The first question asks if a dual system currently exists, while the second asks if there are inequalities in the program offerings between the historically black and the historically white institutions.

Part One of the report addresses the first research question by examining current program duplication in the curricula of Mississippi's public colleges and universities and by identifying unique programs at each institution. An analysis of unnecessary program duplication is included in this part of the report. Part Two of the report examines current program quality by comparing the programs of the traditionally black and the traditionally white institutions in terms of eight indicators of program quality. These indicators are grouped into four major categories: curriculum, resources, faculty, and students.

Based on the first two parts of the report as well as other relevant data, Part Three of the report examines academic program development in Mississippi from 1980 to 1986. More specifically, this part looks at academic program development across those years vis-a-vis the twin concerns of program duplication and program quality.

In terms of the traditionally black and the traditionally white institutions examined in the study, two major types of comparisons are made. First, overall comparisons are made between the five traditionally white institutions and the three traditionally black institutions. Second, compar-

isons are made between six sets of comparative institutions, with each set comprised of one traditionally black and one traditionally white institution.

At the outset of the study, I decided that the most important consideration in deciding what institutions to compare should be the criterion of overlapping service area. In other words, the most important comparisons should be those between institutions or groups of institutions that serve students from similar geographical areas. Using this criterion, it was found that to some extent (though in varying degrees) each of the eight public colleges and universities in Mississippi has a statewide orientation and attracts students from throughout the state. Since all eight institutions may be said to have overlapping service areas (at least to some degree), it was concluded that comparisons should be made between the grouped traditionally white and the grouped traditionally black institutions. Such a comparative framework would provide a foundation for helping to determine whether there is a statewide dual structure and, further, if program equality exists (and has existed) between the traditionally white and the traditionally black institutions in the State of Mississippi.

Notwithstanding the importance of comparison between the grouped historically white and the grouped historically black institutions, it also seemed no less important to compare individual white and individual black institutions. For while all eight institutions in Mississippi have overlapping service areas, it is also the case that the service areas of certain "sets" or "pairs" of institutions overlap more than others. Accordingly, six sets of comparative institutions were chosen on the basis of the criterion of overlapping service areas. That is, out of the pool of fifteen possible comparative groups (comparing each of the three historically black institutions with each

of the five historically white institutions yields a total of fifteen potential comparisons), six sets of institutions were found to have a considerable degree of overlap in service area. The six sets (with each set including one traditionally black and one traditionally white institution) of comparative institutions are the Mississippi State University and Jackson State University, University of Mississippi and Jackson State University, University of Southern Mississippi and Jackson State University, Delta State University and Mississippi Valley State University, University of Southern Mississippi and Alcorn State University, and Mississippi State University and Alcorn State University. The fourth and fifth sets include institutions that are geographically proximate to one another, while the other four sets are made up of the five instititions that clearly have statewide orientations and service areas. (Jackson State University was also included in three comparative groups because it is the major traditionally black institution, and, as a doctoral-granting institution, it was appropriate to compare Jackson State with the three doctoral-granting traditionally white institutions. Moreover, Alcorn State University was compared with Mississippi State University not least because both are land-grant institutions.)

While reference to one or more of the six comparative groups will be made throughout the report, these institutional comparisons will be utilized most extensively in Part One. Throughout the remainder of the report, references to the comparative institutions will be made on a selective basis, especially in those instances where the findings regarding one or more comparative sets of institutions differ from the overall findings based on comparisons between the grouped historically black and the grouped historically white institutions.)

Several major observations regarding data collection, data analysis, and reporting should be mentioned. First, in

order to establish a framework for the analysis of curricula, this report is organized around null hypotheses. In each subsection of the report, a null hypothesis precedes the identification of the pertinent data source(s), the analysis and presentation of major findings, and the conclusion.

Second, in order to make program comparisons across institutions, a master program inventory was derived from the automated version of the Academic Programs Inventory (dated October 15, 1986) developed by the Board of Trustees of State Institutions of Higher Learning in Mississippi. The conversion of the automated version of the Academic Programs Inventory to a master format that would allow for program comparisons was a fairly complex undertaking, requiring the investigator to make various assumptions in classifying programs. Appendix C, which displays the Academic Programs Inventory, discusses

UNITED STATES' EXHIBIT 685a

Table 1
PROGRAM DUPLICATION, BY DEGREE LEVEL, BETWEEN GROUPED HISTORICALLY BLACK AND GROUPED HISTORICALLY WHITE INSTITUTIONS

	Historically Black (3)	Historically White (5)
Bachelors Level		
Duplicated Programs	42	42
Total Programs	52	129
Percent of Duplication	81	33
Masters Level		
Duplicated Programs	26	26
Total Programs	29	105
Percent of Duplication	90	25
Specialist Level		
Duplicated Programs	8	8
Total Programs	9	16
Percent of Duplication	89	50
Doctoral Level		
Duplicated Programs	0	0
Total Programs	1	40
Percent of Duplication	0	0
First Professional Level		
Duplicated Programs	0	0
Total Programs	0	2
Percent of Duplication	0	0

UNITED STATES' EXHIBIT 685b

Table 2
PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

Mississippi State U. (MSU) and Jackson State U. (JSU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
0401	Biology, general	X	X*		
0502	Accounting	X*	X*		
0504	Banking and Finance	X*			
0506	Business Management and Administration	X*	X*		
0509	Marketing and Purchasing	X*			
0517	Business Economics	X*			
0701	Computer and Information Sciences, general	X	X*		
0802	Elementary Education	X*	X*	X*	
0803	Secondary Education	X*	X*	X*	
0808	Special Education, general	X*	X*	X*	
0826	Student Personnel		X*	X*	
0827	Educational Administration		X*	X*	
0832	Music Education	X*	X*		
0835	Physical Education	X	X*		
0838	Business, Commerce, and Distributive Education	X*			
0839	Industrial Arts, Vocational, and Technical Education	X*	X*		
1002	Art	X			
1105	Spanish	X			
1501	English, general	X	X*		

Table 2 – Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

Mississippi State U. (MSU) and Jackson State U. (JSU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
1701	Mathematics, general	X	X*		
1902	Physics, general	X			
1905	Chemistry, general	X	X*		
2001	Psychology, general	X			
2102	Public Administration		X*		
2205	History	X	X*		
2207	Political Science and Government	X	X*		
2208	Sociology	X	X*		

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2 – Continued
PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

U. of Mississippi (UM) and Jackson State U. (JSU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
0401	Biology, general	X	X*		
0502	Accounting	X*	X*		
0504	Banking and Finance	X*			
0506	Business Management and Administration	X*	X*		
0509	Marketing and Purchasing	X*			
0514	Secretarial Studies	X*			
0517	Business Economics	X*			
0701	Computer and Information Sciences, general	X			
0802	Elementary Education	X*	X*	X*	
0803	Secondary Education	X*	X*	X*	
0808	Special Education, general	X*	X*	X*	
0823	Pre-Elementary Education		X*	X*	
0826	Student Personnel		X*	X*	
0827	Educational Administration		X*	X*	
0831	Art Education		X*		
0835	Physical Education	X	X*	X*	
0838	Business, Commerce, and Distributive Education	X*	X*	X*	
0842	Educational Media		X*		
1002	Art	X			
1004	Music	X			
1105	Spanish	X			
1501	English, general	X	X*		
1701	Mathematics, general	X	X*		

Table 2 – Continued
PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

U. of Mississippi (UM) and Jackson State U. (JSU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
1902	Physics, general	X			
1905	Chemistry, general	X	X*		
2001	Psychology, general	X			
2102	Public Administration		X*		
2104	Social Work and Helping Services	X*			
2105	Law Enforcement and Corrections	X*			
2205	History	X	X*		
2207	Political Science and Government	X	X*		
2208	Sociology	X	X*		

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2 – Continued
PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

U. of Southern Mississippi (USM) and Jackson State U. (JSU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
0401	Biology, general	X	X*		
0502	Accounting	X*	X*		
0504	Banking and Finance	X*			
0506	Business Management and Administration	X*	X*		
0509	Marketing and Purchasing	X*			
0517	Business Economics	X*			
0701	Computer and Information Sciences, general	X	X*		
0802	Elementary Education	X*			
0803	Secondary Education	X*			
0808	Special Education, general	X*	X*	X*	
0826	Student Personnel		X*	X*	
0827	Educational Administration		X*	X*	
0831	Art Education		X*		
0832	Music Education	X*	X*		
0834	Science Education		X*		
0835	Physical Education	X	X*		
0838	Business, Commerce, and Distributive Education	X*	X*		
0839	Industrial Arts, Vocational, and Technical Education	X*	X*		
1002	Art	X			
1004	Music	X			
1105	Spanish	X			
1501	English, general	X	X*		

Table 2 – Continued
PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

U. of Southern Mississippi (USM) and Jackson State U. (JSU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
1701	Mathematics, general	X	X*		
1902	Physics, general	X			
1905	Chemistry, general	X	X*		
2001	Psychology, general	X			
2104	Social Work and Helping Service	X*	X*		
2105	Law Enforcement and Corrections	X*			
2201	Social Sciences, general	X			
2205	History	X	X*		
2207	Political Science and Government	X	X*		
2208	Sociology	X			
2407	Industrial Technology	X*			

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2 – Continued
PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

Delta State U. (DSU) and Mississippi Valley State U. (VSU)

HEGIS	Name of Discipline (Program)	Duplicated Programs* B	M	S	D
0401	Biology, general	X			
0506	Business Management and Administration	X*			
0514	Secretarial Studies	X*			
0802	Elementary Education	X*			
0832	Music Education	X*			
0835	Physical Education	X			
1002	Art	X			
1004	Music	X			
1501	English, general	X			
1701	Mathematics, general	X			
2104	Social Work and Helping Services	X*			
2105	Law Enforcement and Corrections	X*			
2208	Sociology	X			

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2 – Continued
PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

U. of Southern Mississippi (USM) and Alcorn State U. (ASU)

HEGIS	Name of Discipline (Program)	Duplicated Programs* B	M	S	D
0401	Biology, general	X			
0502	Accounting	X*			
0506	Business Management and Administration	X*			
0701	Computer and Information Sciences, general	X			
0802	Elementary Education	X*			
0803	Secondary Education	X*			
0808	Special Education, general	X*			
0832	Music Education	X*			
0835	Physical Education	X			
0837	Health Education	X*			
0838	Business, Commerce, and Distributive Education	X*			
0839	Industrial Arts, Vocational, and Technical Education	X*			
1203	Nursing	X*			
1301	Home Economics, general	X*			
1306	Foods and Nutrition	X*			
1501	English, general	X			
1701	Mathematics, general	X			
1905	Chemistry, general	X			
2201	Social Sciences, general	X			
2205	History	X			

Table 2—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

U. of Southern Mississippi (USM) and Alcorn State U. (ASU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
2207	Political Science and Government	X			
2208	Sociology	X			
2407	Industrial Technology	X*			

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

Table 2—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

Mississippi State U. (MSU) and Alcorn State U. (ASU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
0101	Agriculture, general	X			
0102	Agronomy	X			
0104	Animal Science	X			
0111	Agricultural Economics	X			
0401	Biology, general	X			
0502	Accounting	X*			
0506	Business Management and Administration	X*			
0701	Computer and Information Sciences, general	X			
0802	Elementary Education	X*		X*	
0803	Secondary Education	X*		X*	
0808	Special Education, general	X*			
0822	Educational Psychology	X*			
0832	Music Education	X*			
0835	Physical Education	X			
0838	Business, Commerce, and Distributive Education	X*			
0839	Industrial Arts, Vocational, and Technical Education	X			
0840	Agricultural and Extension Education	X			
1301	Home Economics, general	X			
1501	English, general	X			
1701	Mathematics, general	X			

Table 2—Continued

PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

Mississippi State U. (MSU) and Alcorn State U. (ASU)

HEGIS	Name of Discipline (Program)	Duplicated Programs*			
		B	M	S	D
1905	Chemistry, general	X			
2204	Economics	X			
2205	History	X			
2207	Political Science and Government	X			
2208	Sociology	X			

* An asterisk is placed next to those programs classified as unnecessarily duplicated.

UNITED STATES' EXHIBIT 685c

TABLE 3
SUMMARY OF PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

Mississippi State U. and Jackson State U.

	MSU					JSU			
	B	M	S	D	F	B	M	S	D
Duplicated Programs	24	19	5	0	0	24	19	5	0
Total Programs	71	58	1*	21	1	36	27	9	1
Percent Duplication	34	33		0	0	67	70	56	0

U. of Mississippi and Jackson State U.

	UM					JSU			
	B	M	S	D	F	B	M	S	D
Duplicated Programs	26	20	8	0	0	26	20	8	0
Total Programs	59	45	13	21	1	36	27	9	1
Percent Duplication	44	44	62	0	0	72	74	89	0

U. of South. Miss. and Jackson State U.

	USM				JSU			
	B	M	S	D	B	M	S	D
Duplicated Programs	29	19	3	0	29	19	3	0
Total Programs	64	45	2*	13	36	27	9	1
Percent Duplication	45	42		0	81	70	33	0

TABLE 3—Continued
SUMMARY OF PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

Delta State U. and Miss. Valley State U.

	DSU				MVSU			
	B	M	S	D	B	M	S	D
Duplicated Programs	13	0	0	0	13	0	0	0
Total Programs	38	13	5	1	16	1	0	0
Percent Duplication	34	0	0	0	81	0	0	0

U. of South. Miss. and Alcorn State U.

	USM				ASU			
	B	M	S	D	B	M	S	D
Duplicated Programs	23	0	0	0	23	0	0	0
Total Programs	64	45	2	13	36	3	0	0
Percent Duplication	36	0	0	0	64	0	0	0

Mississippi State U. and Alcorn State U.

	MSU					ASU			
	B	M	S	D	F	B	M	S	D
Duplicated Programs	25	2	0	0	0	25	2	0	0
Total Programs	71	58	1	21	1	36	3	0	0
Percent Duplication	35	3	0	0	0	69	67	0	0

* The number of duplicated programs exceeds the total number of programs because several programs at the specialist level were consolidated into other areas. As noted in the Introduction, all consolidated programs were not counted as "programs" (except for purposes of the duplication analysis), hence previous programs that have been consolidated are not included in the total program count. In most cases, consolidated programs were treated as "programs" for purposes of examining duplication, hence they are reflected in the counts for duplicated programs.

TABLE 3—Continued

Degree Level Key:

B: Bachelors
M: Masters
S: Specialist
D: Doctorate
F: First Professional

UNITED STATES' EXHIBIT 685d

TABLE 4

PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY

HEGIS	Major Field	HEGIS	Discipline Name
0400	Biological Sciences	0401	Biology
		0402	Botany
		0407	Zoology
		0410	Physiology, human and animal
		0411	Microbiology
		0412	Anatomy
		0414	Biochemistry
		0416	Molecular biology
		0417	Cell biology
		0420	Ecology
		0421	Entomology
		0422	Genetics
0700	Computer and Information Sciences	0701	Computer and information sciences
		0702	Information sciences and systems
		0703	Data processing
		0704	Computer programming
		0705	Systems analysis
0800	Education	0835	Physical Education
1000	Fine and Applied Arts	1001	Art
		1002	Art

TABLE 4—Continued

PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY

HEGIS	Major Field	HEGIS	Discipline Name
1000	Fine and Applied Arts (continued)	1003	Art History
		1004	Music
		1005	Music
		1006	Music History
		1007	Theater
1100	Foreign Languages	1101	Foreign languages
		1102	French
		1103	German
		1104	Italian
		1105	Spanish
		1106	Russian
		1109	Latin
		1110	Classical Languages
1500	Letters	1501	English
		1502	Literature, English
		1503	Comparative literature
		1504	Classics
		1505	Linguistics
		1506	Speech, debate, and forensic science
		1507	Creative writing
		1509	Philosophy
1700	Mathematics	1701	Mathematics
		1702	Statistics, mathematical and theoretical

TABLE 4 – Continued

PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY

HEGIS	Major Field	HEGIS	Discipline Name
1700	Mathematics (continued)	1703	Applied mathematics
1900	Physical Sciences	1901	Physical sciences
		1902	Physics
		1903	Molecular physics
		1904	Nuclear physics
		1905	Chemistry
		1906	Inorganic chemistry
		1907	Organic chemistry
		1908	Physical chemistry
		1909	Analytical chemistry
		1911	Astronomy
		1912	Astrophysics
		1913	Atmospheric sciences and meterology
		1914	Geology
		1917	Earth sciences
2000	Psychology	2001	Psychology
		2002	Experimental psychology
		2005	Social psychology
		2007	Statistics in psychology
		2009	Developmental psychology
		2010	Physiological psychology

TABLE 4 – Continued

PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY

HEGIS	Major Field	HEGIS	Discipline Name
2200	Social Sciences	2201	Social sciences
		2202	Anthropology
		2204	Economics
		2205	History
		2206	Geography
		2207	Political science and government
		2208	Sociology

UNITED STATES' EXHIBIT 685e

TABLE 5

LAND-GRANT PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY

HEGIS	Major Field	HEGIS	Discipline Name
0100	Agricultural and Natural Resources	0101	Agriculture
		0102	Agronomy
		0103	Soils science
		0104	Animal science
		0105	Dairy science
		0106	Poultry science
		0107	Fish, game, and wildlife management
		0108	Horticulture
		0109	Ornamental horticulture
		0110	Agricultural and farm management
		0111	Agricultural economics
		0112	Agricultural business
		0113	Food science and technology
		0114	Forestry
		0115	Natural resources management
		0116	Agriculture and forestry technologies
		0117	Range management
		0199	Other

TABLE 5 – Continued

LAND-GRANT PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY

HEGIS	Major Field	HEGIS	Discipline Name
0800	Education	0839	Industrial arts, vocational, and technical education
		0840	Agricultural and extension education
0900	Engineering	0901	Engineering
		0902	Aerospace, aeronautical, and astronautical engineering
		0903	Agricultural engineering
		0904	Architectural engineering
		0905	Bioengineering and biomedical engineering
		0906	Chemical engineering
		0907	Petroleum engineering
		0909	Electrical, electronics, and communications engineering
		0910	Mechanical engineering
		0911	Geological engineering

TABLE 5—Continued

LAND-GRANT PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY

HEGIS	Major Field	HEGIS	Discipline Name
0900	Engineering (continued)	0912	Geophysical engineering
		0913	Industrial and management engineering
		0914	Metallurgical engineering
		0915	Materials engineering
		0916	Ceramic engineering
		0917	Textile engineering
		0918	Mining and mineral engineering
		0919	Engineering physics
		0920	Nuclear engineering
		0921	Engineering mechanics
		0922	Environmental and sanitary engineering
		0923	Naval architecture and marine engineering
		0924	Ocean engineering
		0925	Engineering technologies
1300	Home Economics	1301	Home economics
		1302	Home decoration and home equipment

TABLE 5—Continued

LAND-GRANT PROGRAMS IN WHICH DUPLICATION CAN BE CONSIDERED NECESSARY

HEGIS	Major Field	HEGIS	Discipline Name
1300	Home Economics (continued)	1303	Clothing and textiles
		1304	Consumer economics and home management
		1305	Family relations and child development
		1306	Foods and nutrition
		1307	Institutional management and cafeteria management
1800	Military Sciences	1801	Military science
		1802	Naval science
		1803	Aerospace science

UNITED STATES' EXHIBIT 685f

TABLE 6
UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, BETWEEN GROUPED HISTORICALLY BLACK AND GROUPED HISTORICALLY WHITE INSTITUTIONS

	Historically Black (3)	Historically White (5)
Bachelors Level		
Programs Unnecessarily Duplicated	22	22
Total Programs	52	129
Percent Unnecessarily Duplicated	42	17
Masters Level		
Programs Unnecessarily Duplicated	26	26
Total Programs	29	105
Percent Unnecessarily Duplicated	90	25
Specialist Level		
Programs Unnecessarily Duplicated	8	8
Total Programs	9	16
Percent Unnecessarily Duplicated	89	50
Doctoral Level		
Programs Unnecessarily Duplicated	0	0
Total Programs	1	40
Percent Unnecessarily Duplicated	0	0

TABLE 6—Continued
UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, BETWEEN GROUPED HISTORICALLY BLACK AND GROUPED HISTORICALLY WHITE INSTITUTIONS

	Historically Black (3)	Historically White (5)
First Professional Level		
Programs Unnecessarily Duplicated	0	0
Total Programs	0	2
Percent Unnecessarily Duplicated	0	0

UNITED STATES' EXHIBIT 685g

TABLE 7
SUMMARY OF UNNECESSARY PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

Mississippi State U. and Jackson State U.

	MSU					JSU			
	B	M	S	D	F	B	M	S	D
Programs Unnecessarily Duplicated	11	19	5	0	0	11	19	5	0
Total Programs	71	58	1*	21	1	36	27	9	1
Percent Unnecessarily Duplicated	15	33		0	0	31	70	56	0

U. of Mississippi and Jackson State U.

	UM					JSU			
	B	M	S	D	F	B	M	S	D
Programs Unnecessarily Duplicated	12	20	8	0	0	12	20	8	0
Total Programs	59	45	13	21	1	36	27	9	1
Percent Unnecessarily Duplicated	20	44	62	0	0	33	74	89	0

TABLE 7—Continued
SUMMARY OF UNNECESSARY PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

U. of South. Miss. and Jackson State U.

	USM				JSU			
	B	M	S	D	B	M	S	D
Programs Unnecessarily Duplicated	14	19	3	0	14	19	3	0
Total Programs	64	45	2*	13	36	27	9	1
Percent Unnecessarily Duplicated	22	42		0	39	70	33	0

Delta State U. and Miss. Valley State U.

	DSU				MVSU			
	B	M	S	D	B	M	S	D
Programs Unnecessarily Duplicated	6	0	0	0	6	0	0	0
Total Programs	38	13	5	1	16	1	0	0
Percent Unnecessarily Duplicated	16	0	0	0	38	0	0	0

TABLE 7—Continued

SUMMARY OF UNNECESSARY PROGRAM DUPLICATION IN COMPARATIVE INSTITUTIONS

U. of South. Miss. and Alcorn State U.

	USM				ASU			
	B	M	S	D	B	M	S	D
Programs Unnecessarily Duplicated	13	0	0	0	13	0	0	0
Total Programs	64	45	2	13	36	3	0	0
Percent Unnecessarily Duplicated	20	0	0	0	36	0	0	0

Mississippi State U. and Alcorn State U.

	MSU					ASU			
	B	M	S	D	F	B	M	S	D
Programs Unnecessarily Duplicated	8	2	0	0	0	8	2	0	0
Total Programs	71	58	1	21	1	36	3	0	0
Percent Unnecessarily Duplicated	11	3	0	0	0	22	67	0	0

* The number of duplicated programs exceeds the total number of programs because several programs at the specialist level were consolidated into other areas. As noted in the Introduction, all consolidated programs were not counted as "programs" (except for purposes of the duplication analysis), hence previous programs that have been consolidated are not included in the total program count. In most cases, consolidated programs were treated as "programs" for purposes of examining duplication, hence they are reflected in the counts for duplicated programs.

UNITED STATES' EXHIBIT 685h

TABLE 8

NUMBER OF PROGRAMS, BY DEGREE LEVEL, IN HISTORICALLY BLACK AND HISTORICALLY WHITE INSTITUTIONS IN MISSISSIPPI

	Degree Level					
	B	M	S	D	F	Totals
Historically Black						
Jackson State University	36	27	9	1	0	73
Alcorn State University	36	3	0	0	0	39
Mississippi Valley State University	16	1	0	0	0	17
Totals	88	31	9	1	0	129
Average No. of Programs	29	10	3	.33	0	43
Historically White						
University of Mississippi	59	45	13	21	3	141
Mississippi State University	71	58	1	21	1	152
University of Southern Mississippi	64	45	2	13	0	124
Delta State University	38	13	5	1	0	57
Mississippi University for Women	26	1	0	0	0	27
Totals	258	162	21	56	4	501
Average No. of Programs	52	32	4	11	1	100

Degree Level Key:
B: Bachelors
M: Masters
S: Specialist
D: Doctorate
F: First Professional

Note: In this table only, first professional programs from UMMC are included.

Source: *Academic Programs Inventory: State Universities of Mississippi.* Jackson, Mississippi: Board of Trustees of State Institutions of Higher Learning, October 15, 1986.

UNITED STATES' EXHIBIT 685i

TABLE 9

NUMBER OF MAJOR FIELDS (RANGE) IN WHICH PROGRAMS ARE OFFERED IN HISTORICALLY BLACK AND HISTORICALLY WHITE INSTITUTIONS IN MISSISSIPPI

	Degree Level			
	B	M	S	D
Historically Black				
Jackson State University	14	9	1	1
Alcorn State University	12.	2	0	0
Mississippi Valley State University	11	1	0	0
Average No. of Major Fields	12	4	.3	.3
Historically White				
University of Mississippi	19	16	4	11
Mississippi State University	19	15	1	8
University of Southern Mississippi	21	17	2	9
Delta State University	16	2	1	1
Mississippi University for Women	12	1	0	0
Average No. of Major Fields	17	10	2	6

Source: *Academic Programs Inventory: State Universities of Mississippi.* Jackson, Mississippi: Board of Trustees of State Institutions of Higher Learning, October 15, 1986.

UNITED STATES' EXHIBIT 685j

TABLE 10

PROGRAMS ELIGIBLE FOR PROFESSIONAL ACCREDITATION AND PROGRAMS ACCREDITED, BY DEGREE LEVEL

Historically Black Institutions

Level	Number Eligible	Number Accredited	Percent Accredited
Bachelors	38	23	61
Masters	20	15	75
Specialist	10	10	100
Doctorate	1	0	0
Total	69	48	70

Historically White Institutions

Level	Number Eligible	Number Accredited	Percent Accredited
Bachelors	114	80	70
Masters	68	59	87
Specialist	33	33	100
Doctorate	27	27	100
Total	242	199	82

Note: Table 10 includes programs at the baccalaureate degree level and above.

Source: *Accreditations Held by Mississippi Universities.* Jackson, Mississippi: Board of Trustees of State Institutions of Higher Learning, February, 1984.

UNITED STATES' EXHIBIT 685k

TABLE 11

NUMBER OF BOOK VOLUMES IN LIBRARIES OF HISTORICALLY BLACK AND HISTORICALLY WHITE INSTITUTIONS IN MISSISSIPPI

	Number of Book Volumes
Historically Black	
Jackson State University	423,812*
Alcorn State University	201,547
Mississippi Valley State University	114,580
Average	246,646
Historically White	
University of Mississippi	602,032
Mississippi State University	682,337
University of Southern Mississippi	708,672
Delta State University	276,781
Mississippi University for Women	297,215
Average	513,407

* Figure includes microtexts.

Source: *American Library Directory*, 39th Edition, Vol. 1. New York: R. R. Bowker, 1986.

EXHIBIT STATES' EXHIBIT 685i

TABLE 12

PERCENTAGE OF FACULTY WITH DOCTORATE[1]

	Percentage of Faculty With Doctorate[2]
Historically Black	
Jackson State University	50
Alcorn State University	50
Mississippi Valley State University	46
Average	48.7
Historically White	
University of Mississippi	74
Mississippi State University	76
University of Southern Mississippi	54
Delta State University	56
Mississippi University for Women	48
Average	61.6

[1] Includes only full-time faculty

[2] A random sample of 50 faculty members was taken from each institution.

Source: College and University Catalogs.

UNITED STATES' EXHIBIT 685m

TABLE 13

PERCENTAGE OF FACULTY WITH HIGHEST DEGREE FROM RESEARCH UNIVERSITY I[1]

	Percentage of Faculty With Highest Degree From Research University I[2]
Historically Black	
Jackson State University	26
Alcorn State University	8
Mississippi Valley State University	8
Average	14
Historically White	
University of Mississippi	32
Mississippi State University	28
University of Southern Mississippi	16
Delta State University	14
Mississippi University for Women	6
Average	19.2

[1] Includes only full-time faculty

[2] A random sample of 50 faculty members was taken from each institution.

Note: See Appendix A for a list of Research University I institutions.

Source: College and University Catalogs.

UNITED STATES' EXHIBIT 685n

TABLE 14

PERFORMANCE OF FRESHMAN (1985-1986) IN MISSISSIPPI'S HISTORICALLY BLACK AND HISTORICALLY WHITE INSTITUTIONS ON THE AMERICAN COLLEGE TEST

	ACT Composite Score
Historically Black	
Jackson State University	14.0
Alcorn State University	15.0
Mississippi Valley State University	11.8
Average Score	13.6
Historically White	
University of Mississippi	21.0
Mississippi State University	20.0
University of Southern Mississippi	15.0
Delta State University	18.4
Mississippi University for Women	20.0
Average Score	18.9

Source: *Lovejoy's Guide to Colleges*. New York: Monarch, 1985.

American Universities and Colleges. New York: Gruyter, 1983. (This source used only in the case of MVSU.)

UNITED STATES' EXHIBIT 685o

TABLE 15

PROGRAM DUPLICATION, BY DEGREE LEVEL, BETWEEN GROUPED HISTORICALLY BLACK AND GROUPED HISTORICALLY WHITE INSTITUTIONS (1981-1986)

	Historically Black (3)			Historically White (5)		
	1981	1986	% Change	1981	1986	% Change
Bachelors Level						
Duplicated Programs	51	42		51	42	
Total Programs	59	52		147	129	
Percent of Duplication	86	81	– 5	35	33	– 2
Masters Level						
Duplicated Programs	28	26		28	26	
Total Programs	32	29		116	105	
Percent of Duplication	87	90	+ 3	24	25	+ 1
Specialist Level						
Duplicated Programs	10	8		10	8	
Total Programs	11	9		24	16	
Percent of Duplication	91	89	– 2	42	50	+ 8
Doctoral Level						
Duplicated Programs	0	0		0	0	
Total Programs	1	1		45	40	
Percent of Duplication	0	0	0	0	0	0

UNITED STATES' EXHIBIT 685p

TABLE 16

PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	Mississippi State U. and Jackson State U.					
	MSU			JSU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Duplicated Programs	31	24	– 7	31	24	– 7
Total Programs	102	71		46	36	
Percent of Duplication	30	34	+ 4	67	67	0
Masters Level						
Duplicated Programs	21	19	– 2	21	19	– 2
Total Programs	69	58		30	27	
Percent of Duplication	30	33	+ 3	70	70	0
Specialist Level						
Duplicated Programs	6	5		6	5	– 1
Total Programs	9	1		11	9	
Percent of Duplication	67			54	56	+ 2
Doctoral Level						
Duplicated Programs	0	0	0	0	0	0
Total Programs	24	21		1	1	
Percent of Duplication	0	0	0	0	0	0

TABLE 16—Continued

PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	U. of Mississippi and Jackson State U.					
	UM			JSU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Duplicated Programs	31	26	−5	31	26	−5
Total Programs	87	59		46	36	
Percent of Duplication	35	44	+9	67	72	+5
Masters Level						
Duplicated Programs	23	20	−3	23	20	−3
Total Programs	67	45		30	27	
Percent of Duplication	34	44	+10	77	74	−3
Specialist Level						
Duplicated Programs	9	8	−1	9	8	−1
Total Programs	17	13		11	9	
Percent of Duplication	52	62	+10	82	89	+7
Doctoral Level						
Duplicated Programs	0	0	0	0	0	0
Total Programs	21	21		1	1	
Percent of Duplication	0	0	0	0	0	0

TABLE 16—Continued

PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	U. of South. Miss. and Jackson State U.					
	USM			JSU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Duplicated Programs	35	29	−6	35	29	−6
Total Programs	93	64		46	36	
Percent of Duplication	38	45	+7	76	81	+5
Masters Level						
Duplicated Programs	23	19	−4	23	19	−4
Total Programs	59	45		30	27	
Percent of Duplication	39	42	+3	77	70	−7
Specialist Level						
Duplicated Programs	7	3		7	3	−4
Total Programs	15	2*		11	9	
Percent of Duplication	47			64	33	−31
Doctoral Level						
Duplicated Programs	0	0	0	0	0	0
Total Programs	15	13		1	1	
Percent of Duplication	0	0	0	0	0	0

TABLE 16—Continued

PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	Delta State U. and Miss. Valley State U.					
	DSU			MVSU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Duplicated Programs	27	13	−14	27	13	−14
Total Programs	54	38		35	16	
Percent of Duplication	50	34	−16	77	81	+4
Masters Level						
Duplicated Programs	1	0	−1	1	0	−1
Total Programs	21	13		2	1	
Percent of Duplication	5	0	−5	50	0	−50
Specialist Level						
Duplicated Programs	0	0	0	0	0	0
Total Programs	4	5		0	0	
Percent of Duplication	0	0	0	0	0	0
Doctoral Level						
Duplicated Programs	0	0	0	0	0	0
Total Programs	1	1		0	0	
Percent of Duplication	0	0	0	0	0	0

TABLE 16—Continued

PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	U. of South. Miss. and Alcorn State U.					
	USM			ASU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Duplicated Programs	24	23	−1	24	23	−1
Total Programs	93	64		44	36	
Percent of Duplication	26	36	+10	55	64	+9
Masters Level						
Duplicated Programs	0	0	0	0	0	0
Total Programs	59	45		3	3	
Percent of Duplication	0	0	0	0	0	0
Specialist Level						
Duplicated Programs	0	0	0	0	0	0
Total Programs	15	2		0	0	
Percent of Duplication	0	0	0	0	0	0
Doctoral Level						
Duplicated Programs	0	0	0	0	0	0
Total Programs	15	13		0	0	
Percent of Duplication	0	0	0	0	0	0

TABLE 16—Continued

PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

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* The number of duplicated programs exceeds the total number of programs because several programs at the specialist level were consolidated into other areas. As noted in the Introduction, all consolidated programs were not counted as "programs" (except for purposes of the duplication analysis), hence previous programs that have been consolidated are not included in the total program count. In most cases, consolidated programs were treated as "programs" for purposes of examining duplication, hence they are reflected in the counts for duplicated programs.

UNITED STATES' EXHIBIT 685q

TABLE 17

UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, BETWEEN GROUPED HISTORICALLY BLACK AND GROUPED HISTORICALLY WHITE INSTITUTIONS (1981-1986)

	Historically Black (3)			Historically White (5)		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Programs Unnecessarily Duplicated	34	22 (33)*		34	22 (33)	
Total Programs	59	52 (52)		147	129 (129)	
Percent Unnecessarily Duplicated	58	42 (63)	−16(+5)	23	17 (26)	−6 (+3)
Masters Level						
Programs Unnecessarily Duplicated	28	26		28	26	
Total Programs	32	29		116	105	
Percent Unnecessarily Duplication	87	90	+3	24	25	+1

TABLE 17 – Continued

UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, BETWEEN GROUPED HISTORICALLY BLACK AND GROUPED HISTORICALLY WHITE INSTITUTIONS (1981-1986)

	Historically Black (3)			Historically White (5)		
	1981	1986	Change	1981	1986	Change
Specialist Level						
Programs Unnecessarily Duplicated	10	8		10	8	
Total Programs	11	9		24	16	
Percent Unnecessarily Duplicated	91	89	−2	42	50	+8
Doctoral Level						
Programs Unnecessarily Duplicated	0	0		0	0	
Total Programs	1	1		45	40	
Percent Unnecessarily Duplicated	0	0	0	0	0	0

* Since my 1986 definitions of unnecessary program duplication are more inclusive (including land-grant duplication as unnecessary) than my 1981 definitions, it is important to compare figures using identical definitions. Figures in parentheses reflect the definitions of unnecessary duplication used in 1982 and applied to the 1986 data.

UNITED STATES' EXHIBIT 685r

TABLE 18

UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	Mississippi State U. and Jackson State U.					
	MSU			JSU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Programs Unnecessarily Duplicated	16	11		16	11	
Total Programs	102	71		46	36	
Percent Unnecessarily Duplicated	16	15	−1	35	31	−4
Masters Level						
Programs Unnecessarily Duplicated	21	19	−2	21	19	−2
Total Programs	69	58		30	27	
Percent Unnecessarily Duplicated	30	33	+3	70	70	0
Specialist Level						
Programs Unnecessarily Duplicated	6	5*		6	5	−1
Total Programs	9	1		11	9	
Percent Unnecessarily Duplicated	67			54	56	+2
Doctoral Level						
Programs Unnecessarily Duplicated	0	0	0	0	0	0
Total Programs	24	21		1	1	
Percent Unnecessarily Duplicated	0	0	0	0	0	0

TABLE 18—Continued

UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	U. of Mississippi and Jackson State U.					
	UM			JSU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Programs Unnecessarily Duplicated	16	12	− 4	16	12	−4
Total Programs	87	59		46	36	
Percent Unnecessarily Duplicated	18	20	+ 2	34	33	− 1
Master Level						
Programs Unnecessarily Duplicated	23	20	− 3	23	20	− 3
Total Programs	67	45		30	27	
Percent Unnecessarily Duplicated	34	44	+ 10	77	74	− 3
Specialist Level						
Programs Unnecessarily Duplicated	9	8	− 1	9	8	− 1
Total Programs	17	13		11	9	
Percent Unnecessarily Duplicated	52	62	+ 10	82	89	+ 7
Doctoral Level						
Programs Unnecessarily Duplicated	0	0	0	0	0	0
Total Programs	21	21		1	1	
Percent Unnecessarily Duplicated	0	0	0	0	0	0

TABLE 18—Continued

UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	U. of Southern Mississippi and Jackson State U.					
	USM			JSU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Programs Unnecessarily Duplicated	19	14	− 5	19	14	− 5
Total Programs	93	64		46	36	
Percent Unnecessarily Duplicated	20	22	+ 2	41	39	− 2
Master Level						
Programs Unnecessarily Duplicated	23	19	− 4	23	19	− 4
Total Programs	59	45		30	27	
Percent Unnecessarily Duplicated	39	42	+ 3	77	70	− 7
Spec alist Level						
Programs Unnecessarily Duplicated	7	3*		7	3	− 4
Tota: Programs	15	2		11	9	
Percent Unnecessarily Duplicated	47			64	33	− 31
Doctoral Level						
Programs Unnecessarily Duplicated	0	0	0	0	0	0
Total Programs	15	13		1	1	
Percent Unnecessarily Duplicated	0	0	0	0	0	0

TABLE 18 – Continued

UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	Delta State U. and Mississippi Valley State U.					
	DSU			MVS		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Programs Unnecessarily Duplicated	17	6	– 11	17	6	– 11
Total Programs	54	38		35	16	
Percent Unnecessarily Duplicated	31	16	– 15	48	38	– 10
Master Level						
Programs Unnecessarily Duplicated	1	0	– 1	1	0	– 1
Total Programs	21	13		2	1	
Percent Unnecessarily Duplicated	0	0	– 5	50	0	– 50
Specialist Level						
Programs Unnecessarily Duplicated	0	0	0	0	0	0
Total Programs	4	5	0	0	0	0
Percent Unnecessarily Duplicated	0	0		0	0	
Doctoral Level						
Programs Unnecessarily Duplicated	0	0	0	0	0	0
Total Programs	1	1		0	0	
Percent Unnecessarily Duplicated	0	0	0	0	0	0

TABLE 18 – Continued

UNNECESSARY PROGRAM DUPLICATION, BY DEGREE LEVEL, IN COMPARATIVE INSTITUTIONS (1981-1986)

	U. of Southern Mississippi and Alcorn State U.					
	USM			ASU		
	1981	1986	Change	1981	1986	Change
Bachelors Level						
Programs Unnecessarily Duplicated	16	13		16	12	
Total Programs	93	64		44	36	
Percent Unnecessarily Duplicated	17	20	+ 2	36	33	– 3
Master Level						
Programs Unnecessarily Duplicated	0	0	0	0	0	0
Total Programs	59	45		3	3	
Percent Unnecessarily Duplicated	0	0	0	0	0	0
Specialist Level						
Programs Unnecessarily Duplicated	0	0	0	0	0	0
Total Programs	15	2		0	0	
Percent Unnecessarily Duplicated	0	0	0	0	0	0
Doctoral Level						
Programs Unnecessarily Duplicated	0	0	0	0	0	0
Total Programs	15	13		0	0	
Percent Unnecessarily Duplicated	0	0	0	0	0	0

TABLE 18—Continued

•The number of duplicated programs exceeds the total number of programs because several programs at the specialist level were concolidated into other areas. As noted in the Introduction, all consolidated programs were not counted as "programs" (except for purposes of the duplication analysis), hence previous programs that have been consolidated are not included in the total program count. In most cases, consolidated programs were treated as "programs" for purposes of examining duplication, hence they are reflected in the counts for duplicated programs.

UNITED STATES' EXHIBIT 685s

TABLE 19

NUMBER OF UNIQUE (UNDUPLICATED), NON-ESSENTIAL BACHELORS PROGRAMS IN THE TRADITIONALLY BLACK INSTITUTIONS IN FIVE COMPARATIVE PAIRS (1981-1986)

	1981	*1986*	*Change*
Jackson St. U.-Mississippi State U.	9	7	– 2
Jackson St. U.-U. of Mississippi	9	6	– 3
Jackson St. U.-U. of So. Mississippi	7	4	– 3
Miss. Valley St. U.-Alcorn St. U.	7	2	– 5
Alcorn St. U.-U. of So. Mississippi	8	3	– 5

UNITED STATES' EXHIBIT 685t

TABLE 20

UNIQUE (UNDUPLICATED), NON-ESSENTIAL BACHELORS PROGRAMS IN THE TRADITIONALLY BLACK INSTITUTION IN FIVE COMPARATIVE PAIRS (1986)

Jackson State University-Mississippi State University

0514	Secretarial Studies
0607	Mass Communications
0833	Mathematics Education
2104	Social Work and Helping Services
2105	Law Enforcement and Corrections
2214	Urban Studies
2407	Industrial Technology

Jackson State University and University of Mississippi

0607	Mass Communications
0832	Music Education
0833	Mathematics Education
0839	Industrial Arts, Vocational, and Technical Education
2214	Urban Studies
2407	Industrial Technology

Jackson State University and University of Southern Mississippi

0514	Secretarial Studies
0607	Mass Communications
0833	Mathematics Education
2214	Urban Studies

Mississippi Valley State University and Delta State University

1214	Public Health
2407	Industrial Technology

TABLE 20 – Continued

UNIQUE (UNDUPLICATED), NON-ESSENTIAL BACHELORS PROGRAMS IN THE TRADITIONALLY BLACK INSTITUTIONS IN FIVE COMPARATIVE PAIRS (1986)

Alcorn State University and University of Southern Mississippi*

0514	Secretarial Studies
0822	Educational Psychology
0833	Mathematics Education

* Two of the three cooperative programs at ASU are unduplicated at USM; they are Physical Therapy (1212) and Medical Record Librarianship (1215). Medical Lab Technologies (1223) is duplicated. At most, there are five unique, non-essential programs at ASU (including the two cooperative programs).

UNITED STATES' EXHIBIT 685v

TABLE 22

NUMBER OF PROGRAMS, BY DEGREE LEVEL, IN HISTORICALLY BLACK AND HISTORICALLY WHITE INSTITUTIONS IN MISSISSIPPI (1981-1986)

	Bachelors Degree Level		
	1981	1986	Change
Historically Black			
Jackson State University	46	36	– 10
Alcorn State University	44	36	– 8
Mississippi Valley State Univ.	35	16	– 19
Average Number of Programs	42	29	– 31
Historically White			
University of Mississippi	87	59	– 27
Mississippi State University	102	71	– 29
Univ. of Southern Mississippi	93	64	– 29
Delta State University	54	38	– 16
Mississippi University for Women	49	26	– 23
Average Number of Programs	77	52	– 32

	Masters Degree Level		
	1981	1986	Change
Historically Black			
Jackson State University	30	27	– 3
Alcorn State University	3	3	0
Mississippi Valley State Univ.	2	1	– 1
Average Number of Programs	12	10	– 17
Historically White			
University of Mississippi	67	45	– 22
Mississippi State University	69	58	– 11
Univ. of Southern Mississippi	59	45	– 14
Delta State University	21	13	– 8
Mississippi University for Women	18	1	– 17
Average Number of Programs	47	32	– 32

TABLE 22 – Continued

NUMBER OF PROGRAMS, BY DEGREE LEVEL, IN HISTORICALLY BLACK AND HISTORICALLY WHITE INSTITUTIONS IN MISSISSIPPI (1981-1986)

	Specialist Degree Level		
	1981	1986	Change
Historically Black			
Jackson State University	11	9	– 2
Alcorn State University	0	0	
Mississippi Valley State Univ.	0	0	
Average Number of Programs	4	3	– 25
Historically White			
University of Mississippi	17	13	– 4
Mississippi State University	9	1	– 8
Univ. of Southern Mississippi	15	2	– 13
Delta State University	4	5	+ 1
Mississippi University for Women	0	0	0
Average Number of Programs	9	4	– 55

	Doctoral Degree Level		
	1981	1986	Change
Historically Black			
Jackson State University	1	1	0
Alcorn State University	0	0	
Mississippi Valley State Univ.	0	0	
Average Number of Programs	.33	.33	0
Historically White			
University of Mississippi	21	21	0
Mississippi State University	24	21	– 3
Univ. of Southern Mississippi	15	13	– 2
Delta State University	1	1	0
Mississippi University for Women	1	0	– 1
Average Number of Programs	12	11	– 8

UNITED STATES' EXHIBIT 694a

END: JUNE, 1955

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 8,812			Total FTE Number 1,935		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State. local approp.	686	51.42	605	424	60.98	424
2	Tuition, fees	205	15.37	204	188	27.08	188
3	Gifts, grants, contracts	83	6.24	0	3	0.52	0
4	Other	360	26.97	354	79	11.42	79
5	Total E and G	1,335	100.00	1,164	696	100.00	693
EXPENDITURE		Total FTE Number 8,812			Total FTE Number 1,935		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	365	27.50	349	305	44.27	305
2	Organized research	221	16.66	199	0	0.0	0
3	Ext. & public service	385	28.95	383	3	0.52	3
4	Student service	61	4.60	49	42	6.22	42
5	Operation & maintenance	83	6.28	83	129	18.80	129
6	Academic support	72	5.43	72	43	6.37	43
7	Inst. support	84	6.35	84	144	20.97	144
8	Scholarships	15	1.19	4	9	1.35	9
9	Staff benefits	18	1.42	18	10	1.50	10
10	All other	21	1.62	0	0	0.0	0
19	Total of 1,4,6,8,9	534	40.13	493	411	59.70	411
24	Total E & G	1,330	100.00	1,244	689	100.00	689

This is done with MSU2

END: JUNE, 1960

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 13,777			Total FTE Number 3,075		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	709	51.83	642	497	71.16	497
2	Tuition, fees	232	17.02	225	152	21.81	152
3	Gifts, grants, contracts	110	8.08	0	0	0.05	0
4	Other	315	23.06	306	48	6.98	44
5	Total E and G	1,368	100.00	1,174	699	100.00	694
EXPENDITURE		Total FTE Number 13,777			Total FTE Number 3,075		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	404	29.95	377	299	41.65	299
2	Organized research	254	18.82	190	0	0.0	0
3	Ext. & public service	317	23.48	256	2	0.32	2
4	Student service	63	4.68	46	65	9.14	59
5	Operation & maintenance	90	6.66	89	127	17.75	127
6	Academic support	75	5.60	75	72	10.14	72
7	Inst. support	96	7.16	96	112	15.71	112
8	Scholarships	15	1.13	6	14	1.99	14
9	Staff benefits	24	1.83	24	23	3.30	23
10	All other	9	0.69	0	0	0.0	0
19	Total of 1,4,6,8,9	583	43.18	531	475	66.23	469
24	Total E & G	1,351	100.00	1,163	718	100.00	711

This is done with MSU2

END: JUNE, 1962

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 16,478			Total FTE Number 3,571		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	696	49.12	645	542	72.23	542
2	Tuition, fees	272	19.20	256	159	21.17	159
3	Gifts, grants, contracts	160	11.31	0	0	0.04	0
4	Other	288	20.36	276	49	6.56	45
5	Total E and G	1,417	100.00	1,179	751	100.00	746
EXPENDITURE		Total FTE Number 16,478			Total FTE Number 3,571		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	472	34.27	399	324	40.85	324
2	Organized research	211	15.30	160	1	0.21	1
3	Ext. & public service	290	21.08	235	0	0.07	0
4	Student service	77	5.61	52	74	9.38	68
5	Operation & maintnce	86	6.30	86	137	17.27	137
6	Academic support	79	5.78	76	86	10.93	86
7	Inst. support	101	7.35	101	114	14.42	114
8	Scholarships	19	1.42	7	22	2.82	22
9	Staff benefits	28	2.04	28	32	4.05	32
10	All other	11	0.87	0	0	0.0	0
19	Total of 1,4,6,8,9	677	49.11	564	540	68.03	534
24	Total E & G	1,380	100.00	1,148	794	100.00	788

This is done with MSU2

END: JUNE, 1964

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 18,108			Total FTE Number 4,419		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State. local approp.	685	46.84	628	504	66.23	504
2	Tuition, fees	319	21.82	311	192	25.27	192
3	Gifts, grants, contracts	164	11.26	5	0	0.03	0
4	Other	293	20.08	265	64	8.46	59
5	Total E and G	1,463	100.00	1,210	761	100.00	756
EXPENDITURE		Total FTE Number 18,108			Total FTE Number 4,419		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	481	33.23	421	343	43.94	343
2	Organized research	254	17.54	170	0	0.0	0
3	Ext. & public service	281	19.44	227	0	0.09	0
4	Student service	69	4.82	53	67	8.65	67
5	Operation & maintenance	85	5.90	85	103	13.20	103
6	Academic support	93	6.44	83	87	11.14	87
7	Inst. support	98	6.79	97	116	14.85	115
8	Scholarships	32	2.25	15	24	3.10	24
9	Staff benefits	40	2.77	40	39	5.04	39
10	All other	11	0.81	0	0	0.0	0
19	Total of 1,4,6,8,9	717	49.51	614	561	71.87	561
24	Total E & G	1,448	100.0	1,196	781	100.00	781

This is done with MSU2

END: JUNE, 1966

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 22,614			Total FTE Number 5,982		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	701	43.99	654	470	59.23	470
2	Tuition, fees	340	21.32	323	208	26.28	208
3	Gifts, grants, contracts	278	17.46	8	53	6.80	0
4	Other	274	17.22	250	61	7.70	61
5	Total E and G	1,595	100.00	1,237	794	100.00	740
EXPENDITURE		Total FTE Number 22,614			Total FTE Number 5,982		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	519	33.02	443	324	40.97	324
2	Organized research	273	17.41	158	11	1.46	11
3	Ext. & public service	276	17.61	216	2	0.27	2
4	Student service	70	4.50	55	53	6.80	53
5	Operation & maintenance	81	5.20	81	78	9.90	78
6	Academic support	111	7.12	103	87	11.02	87
7	Inst. support	94	6.00	93	94	11.92	94
8	Scholarships	73	4.70	24	65	8.25	65
9	Staff benefits	41	2.66	41	44	5.59	44
10	All other	28	1.78	0	30	3.82	3
19	Total of 1,4,6,8,9	817	52.00	668	575	72.63	575
24	Total E & G	1,572	100.00	1,219	792	100.00	764

This is done with MSU2

END: JUNE, 1968

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 27,183			Total FTE Number 7,531		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	820	44.89	776	580	56.55	593
2	Tuition, fees	391	21.42	380	208	20.29	208
3	Gifts, grants, contracts	369	20.21	13	176	17.21	0
4	Other	246	13.49	223	60	5.94	60
5	Total E and G	1,827	100.00	1,394	1,026	100.00	862
EXPENDITURE		Total FTE Number 27,183			Total FTE Number 7,531		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	631	34.42	503	357	34.80	357
2	Organized research	304	16.63	186	22	2.15	22
3	Ext. & public service	268	14.64	215	0	0.09	0
4	Student service	77	4.22	57	48	4.72	48
5	Operation & maintenance	90	4.94	90	91	8.87	91
6	Academic support	131	7.18	121	112	10.94	112
7	Inst. support	113	6.21	112	132	12.91	132
8	Scholarships	89	4.87	27	86	8.40	85
9	Staff benefits	57	3.12	56	55	5.39	55
10	All other	69	3.77	5	120	11.72	0
19	Total of 1,4,6,8,9	986	53.81	767	659	64.26	659
24	Total E & G	1,833	100.00	1,378	1,026	100.00	905

This is done with MSU2

END: JUNE, 1970

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 26,866			Total FTE Number 9,102		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	984	41.68	947	666	54.45	666
2	Tuition, fees	558	23.66	535	302	24.74	302
3	Gifts, grants, contracts	500	21.17	16	171	14.03	34
4	Other	318	13.49	284	82	6.77	82
5	Total E and G	2,362	100.00	1,782	1,224	100.00	1,087
EXPENDITURE		Total FTE Number 26,866			Total FTE Number 9,102		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	798	33.89	671	459	36.78	459
2	Organized research	390	16.55	209	16	1.36	16
3	Ext. & public service	360	15.29	278	0	0.04	0
4	Student service	99	4.23	76	74	5.99	74
5	Operation & maintenance	131	5.59	131	114	9.20	114
6	Academic support	150	6.40	139	130	10.48	130
7	Inst. support	150	6.37	146	165	13.29	165
8	Scholarships	154	6.57	35	127	10.20	67
9	Staff benefits	96	4.10	96	82	6.61	82
10	All other	23	1.02	0	75	6.04	0
19	Total of 1,4,6,8,9	1,300	55.18	1,018	874	70.07	813
24	Total E & G	2,356	100.00	1,785	1,247	100.00	1,112

This is done with MSU2

END: JUNE, 1972

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 30,247			Total FTE Number 9,736		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	1,411	50.32	1,377	986	54.63	977
2	Tuition, fees	587	20.94	560	369	20.44	369
3	Gifts, grants, contracts	471	16.83	9	392	21.71	64
4	Other	334	11.91	290	58	3.21	43
5	Total E and G	2,804	100.00	2,238	1,806	100.00	1,453
EXPENDITURE		Total FTE Number 30,247			Total FTE Number 9,736		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	902	33.29	796	709	41.04	591
2	Organized research	407	15.03	250	25	1.46	2
3	Ext. & public service	402	14.86	320	1	0.07	1
4	Student service	117	4.32	87	108	6.29	99
5	Operation & maintenance	163	6.03	163	113	6.54	112
6	Academic support	239	8.82	216	152	8.80	141
7	Inst. support	191	7.08	183	213	12.33	205
8	Scholarships	156	5.79	53	289	16.73	164
9	Staff benefits	123	4.57	123	108	6.25	108
10	All other	5	0.21	0	8	0.48	0
19	Total of 1,4,6,8,9	1,539	56.79	1,277	1,368	79.11	1,105
24	Total E & G	2,711	100.00	2,195	1,729	100.00	1,426

This is done with MSU2

END: JUNE, 1974

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 31,339			Total FTE Number 9,346		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	1,745	54.17	1,711	1,318	48.39	1,304
2	Tuition, fees	579	17.98	549	423	15.53	423
3	Gifts, grants, contracts	492	15.29	23	918	33.70	14
4	Other	404	12.56	355	64	2.38	64
5	Total E and G	3,222	100.00	2,639	2,724	100.00	1,807
EXPENDITURE		Total FTE Number 31,339			Total FTE Number 9,346		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	963	30.15	917	946	35.88	758
2	Organized research	536	16.79	304	237	8.99	2
3	Ext. & public service	514	16.11	425	1	0.06	1
4	Student service	135	4.24	98	145	5.53	116
5	Operation & maintenance	205	6.42	204	161	6.13	158
6	Academic support	260	8.14	230	249	9.46	188
7	Inst. support	218	6.85	205	232	8.80	226
8	Scholarships	171	5.37	61	497	18.86	139
9	Staff benefits	175	5.50	175	164	6.23	164
10	All other	13	0.42	0	1	0.07	0
19	Total of 1,4,6,8,9	1,706	53.40	1,484	2,003	75.95	1,367
24	Total E & G	3,196	100.00	2,624	2,637	100.00	1,755

This is done with MSU2

END: JUNE, 1976

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 34,503			Total FTE Number 11,935		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	2,033	55.12	2,000	1,252	50.56	1,252
2	Tuition, fees	660	17.90	624	467	18.88	467
3	Gifts, grants, contracts	570	15.47	12	687	27.74	11
4	Other	424	11.51	364	69	2.82	69
5	Total E and G	3,689	100.00	3,002	2,477	100.00	1,801
EXPENDITURE		Total FTE Number 34,503			Total FTE Number 11,935		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	1,138	31.16	1,018	956	39.88	809
2	Organized research	584	15.98	319	60	2.54	1
3	Ext. & public service	563	15.43	475	22	0.92	0
4	Student service	161	4.42	114	174	7.26	132
5	Operation & maintenance	281	7.71	278	203	8.48	201
6	Academic support	234	6.42	208	218	9.13	157
7	Inst. support	289	7.93	268	243	10.15	216
8	Scholarships	194	5.33	75	383	15.98	141
9	Staff benefits	202	5.53	202	134	5.60	134
10	All other	2	0.08	0	1	0.05	1
19	Total of 1,4,6,8,9	1,932	52.87	1,619	1,866	77.86	1,375
24	Total E & G	3,654	100.00	2,961	2,397	100.00	1,795

This is done with MSU2

END: JUNE, 1978

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 34,894			Total FTE Number 12,223		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	2,495	54.37	2,459	1,489	49.36	1,489
2	Tuition, fees	786	17.13	785	589	19.54	587
3	Gifts, grants, contracts	815	17.77	11	815	27.02	0
4	Other	491	10.72	440	123	4.08	123
5	Total E and G	4,588	100.00	3,696	3,017	100.00	2,199
EXPENDITURE		Total FTE Number 34,894			Total FTE Number 12,223		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	1,556	35.51	1,414	1,304	43.31	1,019
2	Organized research	683	15.58	374	121	4.04	1
3	Ext. & public service	521	11.90	441	0	0.0	0
4	Student service	224	5.12	205	214	7.11	180
5	Operation & maintenance	348	7.94	344	305	10.14	297
6	Academic support	443	10.11	423	265	8.81	224
7	Inst. support	353	8.07	310	323	10.74	272
8	Scholarships	200	4.58	73	431	14.33	151
9	Staff benefits	35	0.82	35	1	0.06	1
10	All other	0	0.0	0	40	1.34	0
19	Total of 1,4,6,8,9	2,461	56.14	2,152	2,217	73.61	1,578
24	Total E & G	4,384	100.00	3,640	3,012	100.00	2,153

This is done with MSU2

END: JUNE, 1980

		Traditionally White Inst.			Traditionally Black Inst.		
INCOME		Total FTE Number 34,691			Total FTE Number 11,190		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	State, local approp.	3,096	55.83	3,096	2,162	49.66	2,162
2	Tuition, fees	957	17.27	954	744	17.11	744
3	Gifts, grants, contracts	899	16.21	37	1,325	30.45	34
4	Other	592	10.69	537	121	2.78	119
5	Total E and G	5,547	100.00	4,626	4,354	100.00	3,062
EXPENDITURE		Total FTE Number 34,691			Total FTE Number 11,190		
		$ per Student	% of Line 6	U.R. $ per Student	$ per Student	% of Line 6	U.R. $ per Student
1	Instruction	1,922	35.52	1,757	1,799	41.75	1,425
2	Organized research	873	16.15	480	269	6.26	0
3	Ext. & public service	642	11.86	589	43	1.00	0
4	Student service	267	4.95	254	260	6.05	220
5	Operation & maintenance	436	8.06	436	461	10.70	458
6	Academic support	522	9.66	488	350	8.12	275
7	Inst. support	464	8.59	389	391	9.08	366
8	Scholarships	253	4.68	87	672	15.60	179
9	Staff benefits	41	0.78	41	0	0.0	0
10	All other	0	0.0	0	52	1.21	0
19	Total of 1,4,6,8,9	3,008	55.58	2,629	3,083	71.52	2,101
24	Total E & G	5,412	100.00	4,512	4,310	100.00	2,938

This is done with MSU2

Cuba Report 4 (Year End 1982-1986) $ Per Student (-Pells) (By Institution)
(With MSU-COMB Data)

	Year End					
	1982		1984		1986	
	Traditional		Traditional		Traditional	
Income	Black	White	Black	White	Black	White
1. State, Local Approp. .	2726.70	3830.04	3150.73	4203.35	3355.18	5003.26
2. Tuition, Fees	947.53	1221.14	1001.92	1454.56	1337.18	1766.88
3. Gifts, Grants Contracts (-Pells) ...	960.74	1056.78	970.29	892.71	1258.01	1266.40
4. Other	254.51	656.45	250.38	713.18	220.91	897.23
5. Total E and G (-Pells) ..	4889.49	6764.29	5373.32	7263.80	6170.78	8933.72
1. Instruction	2561.95	2433.48	2557.71	2592.51	2828.53	3085.12
2. Student Services	370.98	260.85	329.84	278.49	584.34	336.76
3. Academic Support	346.70	646.62	399.67	678.01	429.18	804.94
4. Scholarship (-Pells) ...	444.09	295.32	369.18	313.33	249.35	373.98
5. All other	1506.60	2962.20	1608.41	3161.85	1946.19	3914.82
6. Total of 1,2,3,4 (-Pells) .	3723.72	3636.27	3656.41	3862.33	4091.41	4600.80
7. Total E & G (-Pells) ..	5230.33	6598.47	5264.81	7051.59	6087.60	8515.62

Cuba Report 4 (Year End 1982-1986) $ Per Student (By Institution)
(With MSU-COMB Data)

	Year End					
	1982		1984		1986	
	Traditional		Traditional		Traditional	
Income	Black	White	Black	White	Black	White
1. State, Local Approp. .	2726.70	3830.4	3150.73	4203.35	3355.18	5003.26
2. Tuition, Fees	947.53	1221.14	1001.92	1454.56	1337.18	1766.83
3. Gifts, Grants Contracts .	2152.00	1328.95	2290.21	1184.30	2789.83	1654.15
4. Other	254.51	656.45	250.38	713.18	220.91	897.28
5. Total E and G (-Pells)	6080.74	7036.46	6693.25	7555.38	7702.61	9321.47
1. Instruction	2561.95	2433.48	2557.71	2592.51	2828.53	3085.12
2. Student Services	370.98	260.85	329.84	278.49	584.34	336.76
3. Academic Support	346.70	646.62	399.67	678.01	429.18	804.94
4. Scholarship	1635.35	567.49	1689.11	604.92	1781.18	761.72
5. All other	1506.60	2962.20	1608.41	3161.85	1946.19	3914.82
6. Total of 1,2,3,4	4914.98	3908.45	4976.[illegible]	4153.92	5623.23	4988.56
7. Total E & G	6421.58	6870.64	6584.[illegible]	7343.18	7569.43	8903.38

UNITED STATES' EXHIBIT 694p

CUBA REPORT 1
$ PER STUDENT (000)

END: JUNE, 1955

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	577	INA	325	519	1,264	549	488	528	293
2 Tuition, Fees	162	INA	205	165	165	159	180	270	200
3 Gifts, Grants, Contracts	14	INA	0	79	115	25	0	126	29
4 Other	199	INA	26	118	1,096	43	63	27	32
5 Total E and G	952	INA	556	881	2,640	776	731	951	554
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	405	INA	267	405	405	416	274	411	265
2 Organized Research	0	INA	0	62	708	0	0	11	0
3 Ext. & Public Service	0	INA	0	43	1,099	0	18	112	45
4 Student Service	75	INA	24	21	21	118	50	80	65
5 Operation & Maintnce	228	INA	74	109	109	43	149	89	66
6 Academic Support	44	INA	26	118	137	55	91	52	31
7 Inst. Support	230	INA	94	62	118	95	167	78	53
8 Scholarships	6	INA	0	11	11	25	39	32	2
9 Staff Benefits	21	INA	0	19	19	25	23	21	14
10 All Other	0	INA	0	1	1	0	0	66	6
19 Total of 1,4,6,8,9	552	INA	317	575	593	639	478	597	377
24 Total E & G	1,010	INA	485	852	2,629	777	812	953	547
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	518	400	1,034	2,720	2,720	887	383	2,560	2,645

CUBA REPORT 1
$ PER STUDENT (000)

END: JUNE, 1960

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	556	590	427	506	1,228	523	551	562	344
2 Tuition, Fees	138	218	162	187	187	208	151	317	215
3 Gifts, Grants, Contracts	1	0	0	144	186	7	0	142	54
4 Other	94	8	18	62	949	24	52	38	28
5 Total E and G	790	816	607	900	2,551	762	754	1,059	640
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	352	364	291	459	459	424	257	443	304
2 Organized Research	0	0	0	82	702	0	0	108	27
3 Ext. & Public Service	0	8	2	26	951	0	5	63	15
4 Student Service	82	82	51	43	43	97	72	81	53
5 Operation & Maintnce	167	99	72	80	80	44	176	109	97
6 Academic Support	45	69	57	102	117	56	127	75	35
7 Inst. Support	161	100	90	54	126	103	98	89	67
8 Scholarships	8	50	27	16	16	0	0	20	8
9 Staff Benefits	25	32	24	25	25	30	23	26	19
10 All Other	0	0	0	2	2	7	0	19	11
19 Total of 1,4,6,8,9	512	597	450	644	660	607	479	645	420
24 Total E & G	840	804	615	889	2,521	761	759	1,034	638
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	881	841	1,361	4,285	4,285	1,346	833	3,671	3,634

CUBA REPORT 1

END: JUNE, 1962

$ PER STUDENT (000)

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	468	478	532	542	1,256	481	658	531	402
2 Tuition, Fees	131	206	186	218	218	217	151	395	241
3 Gifts, Grants, Contracts	1	0	0	228	281	4	0	210	81
4 Other	117	8	10	62	946	21	26	46	6
5 Total E and G	717	692	729	1,049	2,701	723	834	1,182	729
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	323	335	328	515	515	415	321	625	325
2 Organized Research	0	0	4	109	695	0	0	21	23
3 Ext. & Public Service	0	4	0	49	963	0	2	44	8
4 Student Service	59	66	71	46	46	87	100	120	65
5 Operation & Maintnce	182	88	86	86	86	49	164	103	86
6 Academic Support	55	52	71	115	132	44	155	68	56
7 Inst. Support	121	126	97	63	140	90	135	86	73
8 Scholarships	13	6	43	27	27	3	0	30	10
9 Staff Benefits	29	28	35	32	32	32	31	26	25
10 All Other	0	0	0	0	0	2	0	19	25
19 Total of 1,4,6,8,9	479	487	548	734	751	582	608	870	481
24 Total E & G	782	704	735	1,041	2,636	722	909	1,143	696
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	1,177	1,186	1,497	4,728	4,728	1,703	897	4,586	4,275

CUBA REPORT 1

END: JUNE, 1964

$ PER STUDENT (000)

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	483	475	519	545	1,234	447	510	596	356
2 Tuition, Fees	156	233	214	318	318	296	206	381	302
3 Gifts, Grants, Contracts	1	0	0	232	305	13	0	267	42
4 Other	148	7	15	93	943	27	33	49	24
5 Total E and G	788	715	749	1,187	2,799	783	749	1,294	724
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	356	388	355	528	528	450	313	623	353
2 Organized Research	0	0	0	130	759	0	0	136	11
3 Ext. & Public Service	0	4	0	57	901	0	2	54	31
4 Student Service	64	79	68	59	59	62	72	107	50
5 Operation & Maintnce	108	80	84	89	90	53	124	117	70
6 Academic Support	52	59	78	138	157	61	141	75	66
7 Inst. Support	139	80	106	74	131	84	102	108	67
8 Scholarships	13	11	26	28	28	37	35	44	32
9 Staff Benefits	33	30	44	38	58	36	41	37	29
10 All Other	0	5	0	35	35	0	0	6	0
19 Total of 1,4,6,8,9	518	567	571	791	830	646	602	886	531
24 Total E & G	765	736	761	1,175	2,746	783	831	1,306	710
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	1,473	1,380	1,700	5,221	5,221	2,083	1,246	4,294	5,130

CUBA REPORT 1

END: JUNE, 1966 **$ PER STUDENT (000)**

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	454	535	529	590	1,112	527	424	614	431
2 Tuition, Fees	158	268	246	318	318	303	216	422	327
3 Gifts, Grants, Contracts	1	0	78	336	532	10	76	388	77
4 Other	184	7	12	77	814	18	4	61	28
5 Total E and G	797	809	864	1,321	2,776	858	719	1,486	862
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	372	445	360	513	513	512	245	668	418
2 Organized Research	38	0	0	148	784	0	0	124	12
3 Ext. & Public Service	0	2	0	87	799	0	6	78	47
4 Student Service	52	80	66	58	58	72	43	103	53
5 Operation & Maintnce	81	64	69	79	80	63	86	112	69
6 Academic Support	91	75	65	152	171	70	107	109	74
7 Inst. Support	121	84	99	72	130	89	66	87	65
8 Scholarships	39	20	41	105	105	9	115	70	82
9 Staff Benefits	40	14	46	41	61	42	47	38	31
10 All Other	0	3	85	24	24	0	0	85	0
19 Total of 1,4,6,8,9	594	634	577	869	908	705	557	988	659
24 Total E & G	834	787	830	1,279	2,725	858	715	1,473	852
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1	1,809	1,663	2,141	6,941	6,941	2,414	2,032	5,440	6,156

CUBA REPORT 1

END: JUNE, 1968 **$ PER STUDENT (000)**

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	639	597	544	764	1,314	669	569	753	483
2 Tuition, Fees	156	298	237	345	345	363	222	511	373
3 Gifts, Grants, Contracts	47	88	339	388	573	14	99	579	179
4 Other	176	6	13	75	756	17	11	52	32
5 Total E and G	1,017	989	1,134	1,572	2,988	1,064	901	1,896	1,067
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	369	428	329	625	625	596	380	848	523
2 Organized Research	73	0	0	181	840	0	1	202	30
3 Ext. & Public Service	0	4	0	115	791	0	3	81	55
4 Student Service	41	68	58	67	67	94	44	107	60
5 Operation & Maintnce	111	0	81	90	90	92	85	126	87
6 Academic Support	127	82	93	162	181	88	122	136	106
7 Inst. Support	159	99	134	79	151	115	105	117	77
8 Scholarships	98	120	38	89	89	18	135	111	85
9 Staff Benefits	50	43	59	54	82	60	56	50	40
10 All Other	0	70	310	119	119	0	0	117	0
19 Total of 1,4,6,8,9	685	741	577	997	1,044	856	737	1,252	815
24 Total E & G	1,028	913	1,102	1,581	3,035	1,063	931	1,894	1,064
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	2,256	2,229	2,920	8,002	8,002	2,540	2,355	6,625	7,787

CUBA REPORT 1

END: JUNE, 1968 **$ PER STUDENT (000)**

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	639	597	544	764	1,314	669	569	753	483
2 Tuition, Fees	156	298	237	345	345	363	222	511	373
3 Gifts, Grants, Contracts	47	88	339	388	573	14	99	579	179
4 Other	176	6	13	75	756	17	11	52	32
5 Total E and G	1,017	989	1,134	1,572	2,988	1,064	901	1,896	1,067
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	369	428	329	625	625	596	380	848	523
2 Organized Research	73	0	0	181	840	0	1	202	30
3 Ext. & Public Service	0	4	0	115	791	0	3	81	55
4 Student Service	41	68	58	67	67	94	44	107	60
5 Operation & Maintnce	111	0	81	90	90	92	85	126	87
6 Academic Support	127	82	93	162	181	88	122	136	106
7 Inst. Support	159	99	134	79	151	115	105	117	77
8 Scholarships	98	120	38	89	89	18	135	111	85
9 Staff Benefits	50	43	59	54	82	60	56	50	40
10 All Other	0	70	310	119	119	0	0	117	0
19 Total of 1,4,6,8,9	685	741	577	997	1,044	856	737	1,252	815
24 Total E & G	1,028	913	1,102	1,581	3,035	1,063	931	1,894	1,064
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	2,256	2,229	2,920	8,002	8,002	2,540	2,355	6,625	7,787

CUBA REPORT 1

END: JUNE, 1970 **$ PER STUDENT (000)**

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	684	767	550	827	1,476	812	871	885	670
2 Tuition, Fees	301	395	344	528	528	465	227	676	579
3 Gifts, Grants, Contracts	2	190	285	644	840	104	132	716	181
4 Other	175	12	71	83	938	55	10	102	28
5 Total E and G	1,163	1,363	1,249	2,083	3,782	1,437	1,241	2,380	1,458
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	481	640	405	791	791	745	540	935	761
2 Organized Research	65	6	0	286	1,010	23	0	311	39
3 Ext. & Public Service	0	12	0	216	1,040	0	2	99	88
4 Student Service	86	93	73	82	82	121	65	132	86
5 Operation & Maintnce	166	86	74	129	143	110	139	169	110
6 Academic Support	142	109	73	179	199	64	230	167	127
7 Inst. Support	190	99	135	95	178	170	200	158	124
8 Scholarships	31	209	193	214	214	110	101	126	112
9 Staff Benefits	84	74	67	80	122	94	110	98	76
10 All Other	0	5	156	0	0	23	0	89	0
19 Total of 1,4,6,8,9	825	1,126	811	1,346	1,408	1,134	1,046	1,458	1,161
24 Total E & G	1,246	1,334	1,176	2,073	3,780	1,460	1,387	2,284	1,521
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	2,385	2,564	4,407	8,038	8,038	2,426	2,310	6,432	7,406

CUBA REPORT 1

END: JUNE, 1972

$ PER STUDENT (000)

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	990	1,141	1,006	1,183	2,036	1,241	944	1,241	1,055
2 Tuition, Fees	337	428	405	539	539	446	331	754	584
3 Gifts, Grants, Contracts	334	195	427	514	832	148	385	565	204
4 Other	121	28	41	61	990	36	26	114	34
5 Total E and G	1,782	1,793	1,879	2,297	4,397	1,871	1,686	2,674	1,877
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	576	871	805	897	897	936	662	978	845
2 Organized Research	88	10	5	163	1,104	13	0	247	72
3 Ext. & Public Service	0	14	0	167	1,129	0	5	126	134
4 Student Service	70	108	144	97	97	135	79	154	105
5 Operation & Maintnce	135	88	101	161	175	147	115	191	157
6 Academic Support	133	185	170	245	271	204	138	284	195
7 Inst. Support	228	146	178	126	242	213	267	197	146
8 Scholarships	374	204	225	185	185	73	329	197	103
9 Staff Benefits	96	94	104	116	160	127	129	121	99
10 All Other	32	14	0	0	0	55	0	0	0
19 Total of 1,4,6,8,9	1,249	1,462	1,448	1,541	1,610	1,475	1,337	1,734	1,346
24 Total E & G	1,732	1,734	1,732	2,158	4,261	1,901	1,724	2,494	1,855
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	2,544	2,774	4,796	8,886	8,886	2,375	2,396	7,422	8,790

CUBA REPORT 1

END: JUNE, 1974

$ PER STUDENT (000)

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	1,305	1,389	1,420	1,310	2,351	1,710	1,144	1,539	1,393
2 Tuition, Fees	319	404	473	531	531	498	436	727	581
3 Gifts, Grants, Contracts	514	226	892	469	811	73	1,375	540	305
4 Other	75	27	72	135	1,171	41	40	130	32
5 Total E and G	2,213	2,047	2,857	2,444	4,865	2,321	2,995	2,936	2,311
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	899	994	1,076	982	982	1,175	753	953	888
2 Organized Research	174	7	4	227	1,320	12	734	269	230
3 Ext. & Public Service	0	13	0	188	1,376	0	6	160	189
4 Student Service	65	132	206	119	119	164	115	156	129
5 Operation & Maintnce	171	128	158	224	243	151	158	223	188
6 Academic Support	218	218	296	212	212	215	195	378	235
7 Inst. Support	228	163	223	144	234	245	253	237	198
8 Scholarships	424	252	539	174	174	210	494	187	121
9 Staff Benefits	162	136	171	153	220	164	154	174	145
10 All Other	2	0	0	0	0	46	5	41	0
19 Total of 1,4,6,8,9	1,767	1,732	2,289	1,641	1,708	1,927	1,711	1,849	1,518
24 Total E & G	2,342	2,043	2,674	2,424	4,880	2,382	2,867	2,779	2,322
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	2,441	2,769	4,490	9,581	9,581	2,372	2,415	7,674	8,943

CUBA REPORT 1

END: JUNE, 1976

$ PER STUDENT (000)

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	1,183	1,822	1,326	1,474	2,668	1,977	1,162	1,706	1,649
2 Tuition, Fees	402	476	518	596	596	560	424	837	659
3 Gifts, Grants, Contracts	772	310	676	570	945	164	625	491	381
4 Other	137	69	58	161	1,116	62	28	148	50
5 Total E and G	2,495	2,677	2,579	2,800	5,325	2,763	2,239	3,182	2,739
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	944	1,285	1,022	1,064	1,064	1,259	827	1,095	1,193
2 Organized Research	228	7	3	230	1,347	15	18	410	152
3 Ext. & Public Service	0	42	0	214	1,392	0	92	196	208
4 Student Service	103	152	216	133	133	215	154	189	160
5 Operation & Maintnce	267	205	182	304	325	312	185	261	262
6 Academic Support	126	198	230	204	204	215	289	332	202
7 Inst. Support	252	208	237	222	355	264	248	314	222
8 Scholarships	384	322	411	175	175	300	322	212	142
9 Staff Benefits	125	190	169	159	228	213	69	192	181
10 All Other	0	39	0	0	0	0	5	0	0
19 Total of 1,4,6,8,9	1,682	2,147	2,048	1,734	1,803	2,202	1,660	2,020	1,879
24 Total E & G	2,429	2,647	2,470	2,704	5,221	2,792	2,208	3,200	2,723
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	2,883	2,573	6,197	11,276	11,276	2,573	2,855	8,384	9,697

CUBA REPORT 1

END: JUNE, 1978

$ PER STUDENT (000)

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	1,747	2,319	1,394	1,857	3,598	2,619	1,487	1,778	1,964
2 Tuition, Fees	495	571	613	745	746	722	620	933	761
3 Gifts, Grants, Contracts	1,234	266	608	780	1,327	163	940	571	778
4 Other	366	95	55	199	1,258	138	66	237	68
5 Total E and G	3,842	3,251	2,670	3,581	6,929	3,642	3,113	3,518	3,571
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	1,127	1,668	1,388	1,460	1,513	1,543	1,262	1,422	1,710
2 Organized Research	565	6	3	354	1,778	6	3	285	180
3 Ext. & Public Service	0	0	0	137	1,642	0	0	20	11
4 Student Service	222	224	204	227	227	322	230	221	202
5 Operation & Maintnce	449	359	241	347	376	417	332	334	310
6 Academic Support	275	346	234	400	454	573	336	507	364
7 Inst. Support	302	315	311	338	443	437	374	303	291
8 Scholarships	562	294	330	194	194	319	563	173	183
9 Staff Benefits	0	0	3	0	112	13	0	0	0
10 All Other	191	0	0	0	0	0	0	0	0
19 Total of 1,4,6,8,9	2,186	2,532	2,159	2,281	2,499	2,770	2,391	2,323	2,459
24 Total E & G	3,694	3,212	2,721	3,510	6,793	3,630	3,100	3,265	3,251
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	2,578	2,494	6,876	10,883	10,907	2,387	2,769	9,351	9,755

CUBA REPORT 1

END: JUNE, 1980 **$ PER STUDENT (000)**

Income	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 State, Local Approp.	3,424	2,722	1,793	2,169	4,370	3,840	2,163	2,240	2,444
2 Tuition, Fees	702	697	821	948	953	775	584	1,097	937
3 Gifts, Grants, Contracts	2,250	367	1,126	895	1,676	479	1,145	544	597
4 Other	393	165	75	264	1,484	107	36	247	139
5 Total E and G	6,770	3,951	3,815	4,276	8,484	5,203	3,928	4,128	4,117
Expenditure	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
1 Instruction	2,123	1,85[illegible]	812	1,764	1,859	2,191	1,527	1,699	2,168
2 Organized Research	1,510		13	488	2,241	7	0	336	266
3 Ext. & Public Service	0	0	0	206	2,001	0	185	27	12
4 Student Service	363	262	224	299	297	383	279	256	225
5 Operation & Maintnce	836	434	351	434	464	644	463	427	373
6 Academic Support	375	380	309	483	553	832	437	593	397
7 Inst. Support	478	495	339	351	583	641	461	384	367
8 Scholarships	1,042	311	583	249	247	442	626	234	225
9 Staff Benefits	0	0	0	0	133	0	0	0	0
10 All Other	301	0	0	0	0	0	0	0	0
19 Total of 1,4,6,8,9	3,903	2,810	2,927	2,796	3,090	3,848	2,869	2,782	3,016
24 Total E & G	7,027	3,745	3,647	4,234	8,338	5,140	3,978	3,956	4,033
FTE Number	*Alcorn*	*Delta*	*Jackson*	*MSU1*	*MSU2*	*MUW*	*MVSU*	*U of M*	*U of SM*
	1,942	2,580	6,639	10,859	10,946	1,973	2,609	9,351	9,841

CUBA REPORT 1 (YEAR END 1982) $ PER STUDENT – PELLS

Income

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. State, Local Approp.	3499.78	3430.49	2354.61	5453.75	3076.61	2963.88	2359.47	5436.08	2862.73	2828.84
2. Tuition, Fees	904.06	1008.83	1034.93	1068.75	1187.16	760.31	•	1187.16	1411.80	1166.98
3. Gifts, Grants, Contracts	2001.78	345.24	488.95	518.75	1203.55	1203.57	•	2167.90	674.97	474.37
4. Other	672.91	107.91	173.65	165.62	329.22	67.57	1264.94	1594.17	310.93	177.90
5. Total E and G	7078.54	4892.47	4052.14	7206.87	5796.54	4995.33	•	10384.95	5260.44	4648.09

Expenditures

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. Instruction	3334.67	2546.67	2560.75	3249.37	2354.79	1829.15	•	2354.79	2206.12	2562.08
2. Student Services	394.91	313.75	367.77	505.62	288.71	356.57	•	288.71	244.15	195.75
3. Academic Support	361.00	567.20	269.98	1065.00	671.86	533.79	•	671.86	791.15	450.54
4. Scholarships	1015.17	334.87	80.90	503.12	321.75	850.40	•	321.75	335.96	190.81
5. All Other	1883.53	930.49	1276.97	1838.75	1929.96	1748.41	4581.11	6511.07	1505.36	1147.71
6. Total of 1,2,3,4	5105.76	3762.29	3279.40	5323.12	3637.11	3569.91	•	3637.11	3577.38	3399.18
7. Total E & G	6989.29	4692.78	4556.37	7161.87	5567.07	5318.32	•	10148.18	5082.73	4546.90

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
FTE Number	2241.00	2604.00	6156.00	1600.00	11108.00	2353.00	11108.00	11108.00	9150.00	10534.00

CUBA REPORT 1 (YEAR END 1984) $ PER STUDENT – PELLS

Income

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. State, Local Approp.	3627.37	3595.56	3015.24	4581.20	3459.34	2996.73	2561.71	6021.05	3428.65	3014.71
2. Tuition, Fees	925.89	1068.29	1104.91	1071.75	1391.83	840.90	*	1391.83	1709.47	1480.14
3. Gifts, Grants, Contracts	2302.74	245.69	617.83	511.68	1177.89	479.75	*	1673.20	823.95	361.51
4. Other	475.37	39.07	33.36	179.64	411.78	526.79	1452.27	1864.05	308.47	89.21
5. Total E and G	7331.37	4948.61	4771.34	6344.27	6440.85	4844.17	*	10950.14	6270.54	4945.57

Expenditures

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. Instruction	3514.53	2581.49	2597.92	2698.00	2489.09	1536.61	*	2489.09	2648.92	2641.92
2. Student Services	464.84	355.16	284.61	403.78	278.98	301.84	*	278.98	326.29	202.11
3. Academic Support	450.11	526.58	379.30	736.93	731.67	397.14	*	731.67	919.91	464.64
4. Scholarships	772.21	374.16	19.37	506.67	317.85	775.46	*	317.85	383.30	208.89
5. All Other	2086.32	685.67	1409.43	1962.18	2277.36	1597.96	4430.28	6707.64	1927.80	1259.09
6. Total of 1,2,3,4	5201.68	3837.38	3281.21	4345.38	3817.59	3011.04	*	3817.59	4278.42	3517.57
7. Total E & G	7288.00	4875.04	4690.64	6307.56	6094.95	4609.00	*	10525.23	6206.22	4776.66

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
FTE Number	2375.00	2841.00	5576.00	1798.00	11732.00	2445.00	11732.00	11732.00	8753.00	11355.00

CUBA REPORT 1 (YEAR END 1986) $ PER STUDENT – PELLS

Income

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. State, Local Approp.	3898.03	4308.72	3052.38	5038.34	4233.48	3587.02	3013.85	7247.33	4000.23	3630.97
2. Tuition, Fees	1185.12	1381.04	1500.26	1432.43	1659.37	1058.17	*	1659.37	2032.31	1811.65
3. Gifts, Grants, Contracts	2396.06	220.78	870.10	717.79	1402.53	1068.75	*	2378.28	1060.04	612.03
4. Other	501.53	−31.98	125.33	269.01	488.42	174.04	1836.29	2324.71	422.98	111.55
5. Total E and G	7980.74	5878.57	5548.08	7457.57	7783.80	5885.58	*	13609.68	7515.57	6166.19

Expenditures

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. Instruction	3964.11	3258.47	2645.28	2991.20	2945.34	2082.21	*	2945.34	3049.82	3230.87
2. Student Services	421.44	446.14	703.99	489.00	356.29	436.06	*	356.29	343.67	260.61
3. Academic Support	478.77	659.31	417.30	855.44	760.90	407.21	*	760.90	1109.15	634.47
4. Scholarships	716.85	297.30	−123.57	592.08	440.54	755.77	*	440.54	434.38	241.86
5. All Other	2299.34	1236.77	1791.53	2191.07	2754.75	1981.25	5457.65	8212.40	2248.27	1686.93
6. Total of 1,2,3,4	5581.18	4661.21	3643.00	4927.72	4503.08	3681.25	*	4503.08	4937.02	4367.80
7. Total E & G	7880.53	5897.98	5434.52	7118.79	7257.83	5662.50	*	12715.48	7185.29	6054.73

Institution

	Alcorn	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
FTE Number	2285.00	2627.00	5689.00	1591.00	11050.00	2080.00	11050.00	11050.00	8511.00	10560.00

CUBA REPORT 1 (YEAR END 1982)
$ PER STUDENT – PELLS

Income	*Alcorn*	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. State, Local Approp.	3499.78	3430.49	2354.61	5453.75	3076.61	2963.88	2359.47	5436.08	2862.73	2828.84
2. Tuition, Fees	904.06	1008.83	1034.93	1068.75	1187.16	760.31	N/A	1187.16	1411.80	1166.98
3. Gifts, Grants, Contracts	2909.42	700.08	1842.43	850.62	1474.07	2240.54	964.35	2438.42	881.53	775.77
4. Other	672.91	107.91	173.65	165.62	329.22	67.57	1264.94	1594.17	310.93	177.90
5. Total E and G	7986.17	5247.31	5405.62	7538.75	6067.07	6032.30	4588.40	10655.47	5466.99	4949.50

Expenditure	*Alcorn*	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. Instruction	3334.67	2546.67	2560.75	3249.37	2354.79	1829.15	N/A	2354.79	2206.12	2562.08
2. Student Services	394.91	313.75	367.77	505.62	288.71	356.57	N/A	288.71	244.15	195.75
3. Academic Support	361.00	567.20	269.98	1065.00	671.86	533.79	N/A	671.86	791.15	450.54
4. Scholarships	1922.80	689.71	1434.37	835.00	592.28	1887.38	N/A	592.28	542.51	492.22
5. All Other	1883.53	930.49	1276.97	1838.75	1929.96	1748.41	4581.11	6511.07	1505.36	1147.71
6. Total of 1,2,3,4	6013.39	4117.13	4632.88	5655.00	3907.63	4606.88	N/A	3907.63	3783.93	3700.59
7. Total E & G	7896.92	5047.62	5909.84	7493.75	5837.59	6355.29	4581.11	10418.71	5289.29	4848.30

Enrollment	*Alcorn*	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
FTE Number	2241.00	2604.00	6156.00	1600.00	11108.00	2353.00	11108.00	11108.00	9150.00	10534.00

CUBA REPORT 1 (YEAR END 1984)
$ PER STUDENT

Income	*Alcorn*	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. State, Local Approp.	3627.37	3595.56	3015.24	4581.20	3459.34	2996.73	2561.71	6021.05	3428.65	3014.71
2. Tuition, Fees	925.89	1068.29	1104.91	1071.75	1391.83	840.90	N/A	1391.83	1709.47	1480.14
3. Gifts, Grants, Contracts	3256.00	617.04	2175.57	824.81	1470.68	1613.50	495.31	1965.99	1048.44	680.23
4. Other	475.37	39.07	33.36	179.64	411.78	526.79	1452.27	1864.05	308.47	89.21
5. Total E and G	8284.63	5319.96	6329.09	6657.40	6733.63	5977.91	4509.29	11242.93	6495.03	5264.29

Expenditure	*Alcorn*	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. Instruction	3514.53	2581.49	2597.92	2698.00	2489.09	1536.61	N/A	2489.09	2648.92	2641.92
2. Student Services	464.84	355.16	284.61	403.78	278.98	301.84	N/A	278.98	326.29	202.11
3. Academic Support	450.11	526.58	379.30	736.93	731.67	397.14	N/A	731.67	919.91	464.64
4. Scholarships	1725.47	745.51	1577.12	819.80	610.64	1909.20	N/A	610.64	607.79	527.61
5. All Other	2086.32	685.67	1409.43	1962.18	2277.36	1597.96	4430.28	6707.64	1927.80	1259.09
6. Total of 1,2,3,4	6154.95	4208.73	4838.95	4658.51	4110.38	4144.79	N/A	4110.38	4502.91	3836.28
7. Total E & G	8241.26	5246.39	6248.39	6620.69	6387.74	5742.74	4430.28	10818.02	6430.71	5095.38

Enrollment	*Alcorn*	*Delta State*	*Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
FTE Number	2375.00	2841.00	5576.00	1798.00	11732.00	2445.00	11732.00	11732.00	8753.00	11355.00

CUBA REPORT 1 (YEAR END 1986)
$ PER STUDENT

Income	*Alcorn*	*Delta State*	*Miss U for Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. State, Local Approp.	3898.03	4308.72	3052.38	5038.34	4233.48	3587.02	3013.85	7247.33	4000.23	3630.97
2. Tuition, Fees	1185.12	1381.04	1500.26	1432.43	1659.37	1058.17	N/A	1659.37	2032.31	1811.65
3. Gifts, Grants, Contracts	3512.47	747.24	2583.23	1092.39	1759.10	2561.06	975.75	2734.84	1339.09	1087.50
4. Other	501.53	−31.98	125.33	269.01	488.42	174.04	1836.29	2324.71	422.98	111.55
5. Total E and G	9097.16	6405.02	7261.21	7832.18	8140.36	7377.88	5825.88	13966.24	7794.62	6641.67

Expenditure	*Alcorn*	*Delta State*	*Miss U for Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
1. Instruction	3964.11	3258.47	2645.28	2991.34	2945.34	2082.21	N/A	2945.34	3049.82	3230.87
2. Student Services	421.44	446.14	703.99	489.00	356.29	436.06	N/A	356.29	343.67	260.61
3. Academic Support	478.77	659.31	417.30	855.44	760.90	407.21	N/A	760.90	1109.15	634.47
4. Scholarships	1833.26	823.75	1589.56	966.69	797.10	2248.08	N/A	797.10	713.43	717.33
5. All Other	2299.34	1236.77	1791.53	2191.07	2754.75	1981.25	5457.65	8212.40	2248.27	1686.93
6. Total of 1,2,3,4	6697.59	5187.67	5356.13	5302.33	4859.64	5173.56	N/A	4859.64	5216.07	4843.28
7. Total E & G	8996.94	6424.44	7147.65	7493.40	7614.39	7154.81	5457.65	13072.04	7464.34	6530.21

Enrollment	*Alcorn*	*Delta State*	*Miss U for Jackson*	*Miss U for Women*	*Miss State*	*Miss Valley*	*MSU Ag Center & Coop*	*MSU-Comb*	*Univ of Miss*	*Univ So Miss*
FTE Number	2285.00	2627.00	5689.00	1591.00	11050.00	2080.00	11050.00	11050.00	8511.00	10560.00

UNITED STATES' EXHIBIT 6944

TABLE 5-1

FACULTY SALARIES

NUMBER OF FTE TEACHING POSITIONS*

	UM	MSU	USM	JSU
Professor	129.36	191.84	127.67	49.00
Associate				
Professor	105.38	140.82	173.35	94.75
Assistant				
Professor	137.50	131.04	181.78	137.25
Instructor	40.73	37.60	47.89	69.00
Total	412.97	501.30	530.69	335.00

	MUW	DSU	ASU	MVSU
Professor	42.89	38.6	14.5	17.5
Associate				
Professor	25.18	32.0	23.6	34.68
Assistant				
Professor	61.92	59.0	54.8	59.75
Instructor	24.12	44.5	48.25	42.00
Total	154.11	174.1	141.15	153.93

* Updated September 1979

Source: Financial Need Analyses, Fiscal Year 1980-81

TABLE 5-1—Continued

FACULTY SALARIES

AVERAGE 9-MONTH SALARY BY RANKS 1979-80*

	UM	MSU	USM	JSU
Professor	$27,313	$26,802	$25,329	$21,903
Associate Professor	21,322	19,968	20,460	20,446
Assistant Professor	16,882	16,628	16,929	17,236
Instructor	11,928	12,536	13,757	14,060
Total	$20,794	$21,153	$19,817	$18,047

	MUW	DSU	ASU	MVSU
Professor	$22,183	$21,148	$22,009	$20,789
Associate Professor	17,945	18,641	18,879	18,327
Assistant Professor	16,313	16,551	15,948	14,543
Instructor	13,901	13.855	12,901	12,488
Total	$17,836	$17,265	$16,019	$15,546

* Updated September 1979

Source: Financial Need Analyses, Fiscal Year 1980-81

TABLE 5-1A

BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

Average 9-Month Salary by Rank
Filled & Unfilled Positions Budgeted for 1986-87

Filled Positions

	ASU	DSU	JSU	MSU	MUW
Professor	$29,506	$32,493	$30,630	$38,258	$31,667
Associate Professor	24,022	28,306	28,561	29,644	25,570
Assistant Professor	20,866	23,313	24,391	25,717	22,941
Instructor	16,417	20,113	20,517	19,156	19,621
Total	$21,291	$26,213	$26,669	$31,957	$26,507

	MVSU	UM	USM	TOTAL
Professor	$28,344	$38,419	$40,674	$36,723
Associate Professor	24,864	31,066	31,790	29,767
Assistant Professor	21,101	24,749	26,920	24,315
Instructor	18,325	18,181	20,693	19,134
Total	$22,746	$30,757	$31,964	$29,306

TABLE 5-1A – Continued

BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

Average 9-Month Salary by Rank
Filled & Unfilled Positions Budgeted for 1986-87

Unfilled Positions

	ASU	DSU	JSU	MSU	MUW
Professor	$ 0	$ 0	$34,632	$36,669	$ 0
Associate Professor	30,797	29,299	19,995	30,648	24,706
Assistant Professor	23,537	22,000	29,228	28,202	21,265
Instructor	16,824	15,327	29,890	18,773	19,827
Total	$22,097	$21,387	$26,669	$29,156	$21,225

	MVSU	UM	USM	TOTAL
Professor	$ 0	$42,148	$40,462	$39,263
Associate Professor	0	32,895	32,430	31,090
Assistant Professor	19,924	23,630	25,230	24,245
Instructor	18,376	18,254	20,176	18,654
Total	$19,783	$27,834	$27,511	$26,251

TABLE 5-2

BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

PROFILE OF UNIVERSITY PERSONNEL
WITH FACULTY RANK*

FIRST REGULAR SESSION: 1980-81

	ASU		DSU	
	N	%	N	%
Tenure Status				
Tenure	31	20.3%	58	30.7%
Non-Tenure	122		131	
Rank				
Professor	15	9.8	52	27.5
Associate Prof.	25	16.3	32	16.9
Assistant Prof.	62	40.5	62	32.8
Instructor	51	33.3	43	22.8
Highest Degree Held				
Doctor	71	46.4	95	50.3
Specialist	5		3	
Master	77		88	
First Professional	–		–	
Bachelor	–		3	
Less than Bachelor	–		–	
TOTAL FACULTY	153		189	

* These figures include all university personnel who hold professional or instructor rank and those who teach in some capacity without rank. They include part-time faculty, research faculty, and teaching administrators in addition to full-time teaching faculty. Military personnel and librarians without rank are excluded (tenured librarians are not included in tenure figures). Data from this table should not be compared with data from the Faculty Characteristics page of previous statistical reports published by this office. These figures should not be used for computing faculty/student ratios.

Source: Board of Trustee Statistical Report, 1980-81.

TABLE 5-2 – Continued

BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

PROFILE OF UNIVERSITY PERSONNEL
WITH FACULTY RANK*

FIRST REGULAR SESSION: 1980-81

	JSU		MSU	
	N	%	N	%
Tenure Status				
Tenure	157	44.2%	499	60.8%
Non-Tenure	198		322	
Rank				
Professor	60	16.9	346	42.1
Associate Prof.	85	23.9	217	26.4
Assistant Prof.	147	41.4	183	22.3
Instructor	62	17.5	74	9.0
Highest Degree Held				
Doctor	205	57.7	587	71.5
Specialist	3		7	
Master	138		203	
First Professional	5	—	—	
Bachelor	3		24	
Less than Bachelor	1		—	
TOTAL FACULTY	355		821	

* These figures include all university personnel who hold professional or instructor rank and those who teach in some capacity without rank. They include part-time faculty, research faculty, and teaching administrators in addition to full-time teaching faculty. Military personnel and librarians without rank are excluded (tenured librarians are not included in tenure figures). Data from this table should not be compared with data from the Faculty Characteristics page of previous statistical reports published by this office. These figures should not be used for computing faculty/student ratios.

Source: Board of Trustee Statistical Report, 1980-81.

TABLE 5-2 – Continued

BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

PROFILE OF UNIVERSITY PERSONNEL
WITH FACULTY RANK*

FIRST REGULAR SESSION: 1980-81

	MUW		MVSU	
	N	%	N	%
Tenure Status				
Tenure	82	47.1%	38	24.1%
Non-Tenure	92		120	
Rank				
Professor	48	27.6	20	12.7
Associate Prof.	28	16.1	30	19.0
Assistant Prof.	65	37.4	71	44.9
Instructor	33	19.0	37	23.4
Highest Degree Held				
Doctor	77	44.3	60	38.0
Specialist	2		5	
Master	91		81	
First Professional	—		3	
Bachelor	3		9	
Less than Bachelor	1		—	
TOTAL FACULTY	174		158	

* These figures include all university personnel who hold professional or instructor rank and those who teach in some capacity without rank. They include part-time faculty, research faculty, and teaching administrators in addition to full-time teaching faculty. Military personnel and librarians without rank are excluded (tenured librarians are not included in tenure figures). Data from this table should not be compared with data from the Faculty Characteristics page of previous statistical reports published by this office. These figures should not be used for computing faculty/student ratios.

Source: Board of Trustee Statistical Report, 1980-81.

TABLE 5-2 – Continued

BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

PROFILE OF UNIVERSITY PERSONNEL
WITH FACULTY RANK*

FIRST REGULAR SESSION: 1980-81

	UM		USM	
	N	%	N	%
Tenure Status				
Tenure	253	44.8%	263	42.4%
Non-Tenure	312		358	
Rank				
Professor	151	26.7	139	22.4
Associate Prof.	129	22.8	203	32.7
Assistant Prof.	176	31.2	217	34.9
Instructor	109	19.3	62	10.0
Highest Degree Held				
Doctor	377	66.7	404	65.1
Specialist	1		2	
Master	131		205	
First Professional	26		3	
Bachelor	30		7	
Less than Bachelor	–		–	
TOTAL FACULTY	565		621	

* These figures include all university personnel who hold professional or instructor rank and those who teach in some capacity without rank. They include part-time faculty, research faculty, and teaching administrators in addition to full-time teaching faculty. Military personnel and librarians without rank are excluded (tenured librarians are not included in tenure figures). Data from this table should not be compared with data from the Faculty Characteristics page of previous statistical reports published by this office. These figures should not be used for computing faculty/student ratios.

Source: Board of Trustee Statistical Report, 1980-81.

TABLE 5-2 – Continued

BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

PROFILE OF UNIVERSITY PERSONNEL
WITH FACULTY RANK*

FIRST REGULAR SESSION: 1980-81

	UMMC	Total	Percent
Tenure Status			
Tenure	92	1,473	41.57
Non-Tenure	415	2,070	58.43
Rank			
Professor	95	926	26.14
Associate Prof.	88	837	23.62
Assistant Prof.	222	1,205	34.01
Instructor	102	573	16.17
Highest Degree Held			
Doctor	125	2,001	56.48
Specialist	–	28	0.79
Master	70	1,084	30.60
First Professional	279	316	8.92
Bachelor	29	108	3.05
Less than Bachelor	4	6	0.17
TOTAL FACULTY	507	3,543	100.00

* These figures include all university personnel who hold professional or instructor rank and those who teach in some capacity without rank. They include part-time faculty, research faculty, and teaching administrators in addition to full-time teaching faculty. Military personnel and librarians without rank are excluded (tenured librarians are not included in tenure figures). Data from this table should not be compared with data from the Faculty Characteristics page of previous statistical reports published by this office. These figures should not be used for computing faculty/student ratios.

Source: Board of Trustee Statistical Report, 1980-81.

TABLE 5-2A

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MISSISSIPPI

PROFILE OF UNIVERSITY PERSONNEL WITH FACULTY RANK*

FIRST REGULAR SESSION: 1985-86

Profile	ASU	DSU	JSU	MSU	MUW	MVSU
Tenure	31	68	194	547	74	52
Non-Tenure	143	135	165	348	55	86
Male	101	133	214	723	45	94
Female	73	70	145	172	84	44
Professor	19	65	81	383	46	26
Associate Prof.	30	36	90	234	22	29
Assistant Prof.	50	58	128	185	43	53
Instructor	75	42	60	58	18	30
Other	0	2	0	35	0	0
Age of Faculty						
Over 65	1	1	3	6	0	2
61-65	7	9	13	67	11	9
51-60	36	33	93	207	26	33
41-50	54	71	144	320	49	52
31-40	55	70	90	241	37	33
21-30	21	19	16	54	6	9
Highest Degree Held						
Doctoral	81	107	233	628	68	58
Specialist	3	1	4	49	2	3
Master's	88	90	120	7	55	73
First Professional	1	2	1	195	0	1
Bachelor's	1	3	1	16	3	3
Less than Bachelor's	0	0	0	0	1	0
Total Faculty	174	203	359	895	129	138

* These figures include all university personnel who hold professional or instructor rank and those who teach in some capacity without rank. They include part-time faculty, research faculty, and teaching administrators in addition to full-time teaching faculty. Military personnel and librarians without rank are excluded (tenured librarians are not included in tenure figures). Data from this page should not be compared with data from the Faculty Characteristics page of statistical reports published before February 1982 by this office. These figures should not be used for computing faculty/student ratios.

TABLE 5-2A – Continued

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MISSISSIPPI

PROFILE OF UNIVERSITY PERSONNEL WITH FACULTY RANK*

FIRST REGULAR SESSION: 1985-86

Profile	UM	USM	UMMC	Total	Percent
Tenure	277	322	148	1,713	45.5
Non-Tenure	396	353	373	2,054	54.5
Male	496	476	388	2,670	70.9
Female	177	199	133	1,097	29.1
Professor	174	178	99	1,017	28.4
Associate Prof.	152	194	128	915	24.3
Assistant Prof.	160	208	218	1,103	29.3
Instructor	164	87	76	610	16.2
Other	23	8	0	68	1.8
Age of Faculty					
Over 65	5	3	11	32	0.9
61-65	24	28	22	190	5.0
51-60	132	137	111	808	21.5
41-50	197	259	138	1,284	34.1
31-40	231	216	216	1,189	21.6
21-30	84	32	23	264	7.0
Highest Degree Held					
Doctoral	397	435	129	2,136	56.7
Specialist	39	3	0	104	2.8
Master's	0	218	61	712	18.9
First Professional	151	0	304	655	17.4
Bachelor's	75	19	21	142	3.8
Less than Bachelor's	11	0	6	18	.5
Total Faculty	673	675	521	3,767	100.0

* These figures include all university personnel who hold professional or instructor rank and those who teach in some capacity without rank. They include part-time faculty, research faculty, and teaching administrators in addition to full-time teaching faculty. Military personnel and librarians without rank are excluded (tenured librarians are not included in tenure figures). Data from this page should not be compared with data from the Faculty Characteristics page of statistical reports published before February 1982 by this office. These figures should not be used for computing faculty/student ratios.

UNITED STATES' EXHIBIT 695a

EXCERPTS OF THE MISSISSIPPI LEGISLATIVE HISTORY RELATIVE TO THE STATE'S DISPOSITION OF MAJOR LAND GRANT ACTS AND SOME APPROPRIATIONS TO ITS LAND GRANT COLLEGES

(References for this Table in Parenthesis)

1868	Legislature accepts 1862 Morrill Act and expresses its intent to appropriate 210,000 acres of land to help raise land scrip. May 15, 1868.
1871 (1)	Univ. MS – MS Legislature gives 2/5 of land scrip to Univ. of MS at Oxford (May 13, 1871) Appropriations – 50,000 UM
1871 (1)	ASU – Establishes Alcorn University May 13, 1871. MS Legislature gives 3/5 of land scrip to univ. for people of color. (May 13, 1871) Appropriations – 50,000 ASU
1878 (2)	MSU – Establishes Agricultural and Mechanical Colleges. One is to be for colored youth of state. Other for white youth is still to be located. Gives new college 160 acres for experimental farm. Land scrip to this college is 1/2. Feb. 28, 1878.
1878 (2)	ASU – Reorganizes Alcorn Univ. to Alcorn A & M College and was again declared to be an agri. college for colored youth. Land scrip interest to Alcorn now becomes 1/2. Feb. 28, 1878. Appropriations – In 1874, Alcorn's appropriation reduced. In 1878, equal sums of land scrip fund were appropriated to MS A&M and Alcorn A & M
1880 (3, 4)	MSU – Changed make up of Board of Trustees of MS A & M Univ. Reaffirmed equal division of land scrip between MS A&M and Alcorn A & M.

EXCERPTS OF THE MISSISSIPPI LEGISLATIVE HISTORY RELATIVE TO THE STATE'S DISPOSITION OF MAJOR LAND GRANT ACTS AND SOME APPROPRIATIONS TO ITS LAND GRANT COLLEGES – Continued

(References for this Table in Parenthesis)

1880 (3, 4)	ASU – Provides for continuance of Alcorn A & M for colored youth and all provisions of this code (pertaining to MS A & M shall be applicable, the necessary "changes" being made.
1886 (5)	Appropriations – MSU – $25,000 for 1886 Appropriations – MSU – $25,000 for 1887 Appropriations – ASU – $11,000 for 1886 Appropriations – ASU – $11,000 for 1887
1888 (6, 7)	MSU – Accepted provisions of 1887 Hatch Exp. Station Act and gave MS A & M College near Starkville the power to expend such funds. July 31. Appropriations – MSU – 17,660 for 1888 Appropriations – MSU – 17,660 for 1889 ASU – Given no powers relative to Hatch Act. Appropriations – ASU – 9,500 for 1888 Appropriations – ASU – 9,500 for 1889
1892 (8, 9)	MSU – Gave MS A & M right to: 1 – Have free tuition students (white males) 2 – The privilege of the dormitories shall belong to the free tuition students. 3 – Each county has a right to have a number of students admitted proportionate to its number of white educable males compared with number in whole state. Reaffirms Hatch Act exp. sta. funds go to MS A & M

EXCERPTS OF THE MISSISSIPPI LEGISLATIVE HISTORY RELATIVE TO THE STATE'S DISPOSITION OF MAJOR LAND GRANT ACTS AND SOME APPROPRIATIONS TO ITS LAND GRANT COLLEGES – Continued

(References for this Table in Parenthesis)

1892 (8, 9)	ASU – *Specifically* denies *3* rights given to MS A & M on free student tuition, dorms, and numbers in each county – and experiment station to Alcorn A & M
1906 (10, 11)	MSU and ASU – The same privileges on free students, etc. were given to MS A & M and denied to AL A & M.
1916 (12, 13, 14, 15, 16, 17, 18, 19)	MSU – Appropriations for 1916 – $194,016.00 (includes exp. sta. sales) ASU – Appropriations for 1916 – $22,202.27 Branch Exp. Sta. – $29,250.00 Stoneville – $12,000.00 McNeil – $8,250.00 Holly Springs – $9,000.00
1917 (20, 21)	MSU – Reorg. of MS A & M College which among other things incorporated Exp. Sta. and Ext. ASU – Continued Alcorn A & M; Gave 1/2 of land scrip fund; *denied* free students etc. as in 1906 and 1892 above.
1927 (22)	MSU – *MS Revised Const.* Repledged duty of state to carry out provisions of July 2, 1862 Act.
1942 (23, 24)	MSU – Name of MS A & M change to MS College and authorized it to acquire land by purchase or gift thru MAES (MAFES). Reaffirmed free tuition, etc. *New Exp. Stations* – Brown Loan; Black Belt; Coastal Plain; Lee County and South Miss.

EXCERPTS OF THE MISSISSIPPI LEGISLATIVE HISTORY RELATIVE TO THE STATE'S DISPOSITION OF MAJOR LAND GRANT ACTS AND SOME APPROPRIATIONS TO ITS LAND GRANT COLLEGES – Continued

(References for this Table in Parenthesis)

1942 (23, 24)	ASU – Alcorn A & M recognized and continued was again denied free tuition, etc. as well as exp. sta.
1942 (23)	MSU – *Expanded Exp. Sta.* – Holly Springs; Delta; Truck Crops; Created 4-H Club Camp at Lake Sardis in Panola County; Created Negro 4-H Club Camp in Madison County. Provided for foundation Herds in beef cattle, sheep, and hogs.
1974 (24)	MSU – Established College of Veterinary Medicine at MSU. ASU – Alcorn A & M's name changed to Alcorn State University.
1972 (5, 26, 27)	MSU – MS College gets name changed to MSU of Agriculture and Applied Science. – Land Scrip fund restated as MSU getting 1/2 of interest. – Repledges acceptance of provisions of First Morrill Act and by convoluted wording. – Authorizes Special retirement system for employees in MAFES & MCES. – Authorizes tax collector of each county to collect funds specifically for Delta Branch Exp. Sta. ASU – Alcorn is continued and again is excepted from free students, apportionment of free student by county and dormitory privileges. Authorizes Branch Exp. Sta. at Alcorn.

NOTE: References for this table are given just before the Appendix.

UNITED STATES' EXHIBIT 695e

TABLE 7 (III)

FUNDING SOURCES FOR RESEARCH IN AGRICULTURE AT MISSISSIPPI STATE UNIVERSITY AND ALCORN STATE UNIVERSITY, FISCAL YEARS 1955 AND 1960-1981

Mississippi Agriculture and Forestry Experiment Station

Year	Federal[a]	State	Other[b]	Total[c]
1955	528,396	611,767	620,741	1,760,904
1960	839,570	–	–	–
1961	868,034	1,069,026	729,852	2,666,912
1962	945,013	1,155,536	747,157	2,845,706
1963	996,398	1,121,446	769,183	2,887,027
1964	1,065,522	1,347,367	809,109	3,221,998
1965	1,300,288	1,324,271	930,014	3,554,573
1966	1,391,818	1,200,000	1,045,322	3,637,140
1967	1,615,198	1,450,000	1,190,358	4,255,556
1968	1,532,743	1,450,000	1,354,919	4,337,662
1969	1,592,456	1,807,730	1,471,452	4,871,638
1970	1,717,837	1,807,730	1,525,439	5,051,006
1971	2,054,123	2,800,000	1,757,446	6,611,569
1972	2,112,876	3,071,000	1,543,308	6,727,184
1973	2,282,795	4,145,840	1,519,481	7,948,116
1974	2,133,845	4,657,856	1,858,628	8,650,329
1975	2,307,482	6,069,672	1,653,961	10,031,115
1976	2,536,885	6,346,252	1,791,000	10,674,137
1976 TQ	636,350	–	–	636,350
1977	2,937,599	6,493,593	1,781,356	11,212,548
1978	3,060,555	7,840,397	1,512,721	12,413,673
1979	3,206,424	9,584,881	1,145,738	13,937,043
1980	3,701,889	10,073,455	2,158,264	15,933,608
1981	–	11,456,594	2,666,718	

Footnotes at end of table.

TABLE 7 (III)—Continued

FUNDING SOURCES FOR RESEARCH IN AGRICULTURE AT MISSISSIPPI STATE UNIVERSITY AND ALCORN STATE UNIVERSITY, FISCAL YEARS 1955 AND 1960-1981

Alcorn State University

Year	Federal[d]	State[e]	Total
1955	0	0	0
1960	0	0	0
1961	0	0	0
1962	0	0	0
1963	0	0	0
1964	0	0	0
1965	0	0	0
1966	0	0	0
1967	18,751	0	18,751
1968	18,751	0	18,751
1969	18,751	0	18,751
1970	18,751	0	18,751
1971	18,751	0	18,751
1972	579,050	105,000	684,050
1973	712,598	106,093	818,691
1974	712,598	118,138	830,736
1975	775,372	121,168	896,540
1976	834,210	126,425	960,635
1976 TQ	208,519	–	208,519
1977	877,305	127,689	1,004,994
1978	930,740	136,454	1,067,194
1979	1,028,148	155,821	1,183,969
1980	1,104,983	162,811	1,267,794
1981	1,108,451	178,257	1,286,708

Footnotes at end of table.

TABLE 7 (III) – Continued

FOOTNOTES

[a] Includes Hatch, McIntyre-Stennis, PL 89-106, Title V – Rural Devel. Act, Title 1 – Bankhead-Jones Act, PL 88-74 Research Facilities and PL 95-113 – Animal Health and Disease where applicable. From information provided by USDA/SEA.

[b] Other includes gifts and grants and self-generated income. Information provided by 1981 Deposition of Rodney Foil, Exhibit 2 except for 1960.

[c] Does not include state and other non-Federal appropriations for Forest Products Utilization Laboratory.

[d] Information provided by USDA/SEA.

[e] Exhibit No. 2 – Deposition of William C. Boykin, Sr. – 1980.

UNITED STATES' EXHIBIT 695h

TABLE 9 (VI)

FUNDING SOURCES FOR EXTENSION IN AGRICULTURE AT MISSISSIPPI STATE UNIVERSITY AND ALCORN STATE UNIVERSITY, 1955, AND 1960-1980

	Mississippi Cooperative Extension Service – MSU			
Year	Federal[a]	State[b]	Other[c]	Total
1955[f]	1,495,417	775,000	635,748	2,906,165
1960	2,205,247	1,252,450	896,397	4,354,094
1961	2,109,443	1,399,450	912,628	4,421,521
1962	2,164,382	1,399,450	995,960	4,559,792
1963	2,280,716	1,400,000	952,660	4,633,376
1964	2,382,855	1,400,000	968,230	4,751,085
1965	2,519,032	1,495,000	981,853	4,995,885
1966	2,653,053	1,495,000	959,325	5,107,378
1967	2,742,598	1,925,000	1,005,327	5,672,925
1968	2,775,222	1,925,000	1,035,216	5,715,438
1969	3,129,298	2,266,396	1,008,459	6,404,153
1970	3,749,466	2,266,397	1,073,786	7,089,649
1971	4,442,403	3,066,481	1,080,781	8,589,665
1972	4,665,280	3,255,350	1,105,802	9,026,432
1973	4,877,897	3,686,661	1,125,102	9,689,660
1974	4,926,561	4,156,161	1,182,347	10,265,069
1975	5,313,253	4,876,161	1,202,316	11,391,730
1976	7,052,850	5,573,849	1,253,119	13,879,818
1976	TQ "	"	"	"
1977	5,728,967	5,844,330	1,338,978	12,912,275
1978	6,023,387	7,642,584	1,511,394	15,177,365
1979	6,187,794	8,481,084	1,542,132	16,211,010
1980	6,395,637	8,964,128	1,749,839	17,109,604
1981	6,753,314	10,523,823*	1,436,147	

Footnotes at end of table.

TABLE 9 (VI)—Continued

FUNDING SOURCES FOR EXTENSION IN AGRICULTURE AT MISSISSIPPI STATE UNIVERSITY AND ALCORN STATE UNIVERSITY, 1955, AND 1960-1981

Alcorn State University
Extension Service

Year	Federal[d]	State	Total
1955	0	0	0
1960	0	0	0
1961	0	0	0
1962	0	0	0
1963	0	0[v]	0
1964	0	0	0
1965	0	0	0
1966	0	0	0
1967	0	0	0
1968	0	0	
1969	0	0	
1970	0	0	
1971	0	0	
1972	245,188	0	245,188
1973	354,596	0	354,596
1974	354,596	0	354,596
1975	378,987	0	378,987
1976	566,757[g]	0	566,757
1976			
1977	484,680[g]	0	484,680
1978	535,250[g]	0	535,250
1979	577,859	0	577,859
1980	596,276[h]	0	596,276
1981	639,703[h]	108,558	748,261

Footnotes at end of table.

TABLE 9 (VI)—Continued

FUNDING SOURCES FOR EXTENSION IN AGRICULTURE AT MISSISSIPPI STATE UNIVERSITY AND ALCORN STATE UNIVERSITY, 1955, AND 1960-1981

[a] Information provided to Dept. of Justice by USDA/SEA. Includes funds under Smith Lever, Agric. Marketing Act, and Rural Development Act.

[b] Exhibit No. 2, Deposition of William M. Bust, 1981.

[c] Exhibit No. 2, Deposition of William M. Bust, 1981, consists largely of County Funds.

[d] Information provided to Dept. of Justice by USDA/SEA. Includes funds under Smith Lever, Section 3d and PL 95-113.

[e] Exhibit No. 2, deposition of William C. Boykin, Sr., 1980.

[f] From Mississippi State College Agricultural Extension Service, Financial Report for the year ended June 30, 1955.

[g] During Fiscal Years 1976, 1977 and 1978, Alcorn received Special Federal Funds for a small Farmer program: $67,752, 54,202, and 54,202 respectively. these are included in the Federal totals for these Fiscal years. Source: Documents received from Alcorn State University.

[h] During Fiscal years 1979, and 1980, $12,009 and $12,002 were received by Alcorn State University for their participation in the Southern Rural Development Center. Source—Documents received from Alcorn State University.

[v] From work summary budget statement, MCES, 1980-81.

UNITED STATES' EXHIBIT 695m

TABLE 11 (XI)

MISSISSIPPI STATE APPROPRIATIONS TO LAND GRANT ACTIVITIES AT MISSISSIPPI STATE UNIVERSITY AND ALCORN STATE UNIVERSITY, 1980-86

	FY 1980[a]	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986
Instruction							
MSU	1,965,180	UA	3,666,718[g]	3,974,325[g]	3,825,820[g]	4,009,783[g]	3,208,859[g]
ASU	322,271	UA	673,939[c]	669,634[c]	744,858[c]	663,693[c]	736,669[c]
			(419,880)[d]	(405,251)[d]	(432,438)[d]	(381,938)[d]	(443,656)[d]
%ASU	16.4		11.4	10.2	11.3	9.5	13.8
Research							
MSU	12,231,719[a]	11,456,594[b,c]	11,980,938[b,c]	11,866,494[b,c]	13,294,922[b,c]	13,446,694[b,c]	16,882,294[b,c]
ASU	162,811	178,257[c]	157,094[c]	176,554[c]	229,345[c]	238,792[c]	220,817[c]
%ASU	1.3%	1.5%	1.3%	1.5%	1.7%	1.8%	1.3%
Extension							
MSU	10,713,967[a]	10,523,823[a,b]	11,133,988[b]	11,204,087[b]	13,269,631[b]	12,989,797[b]	13,896,783[b]
ASU	0	108,558[a]	98,103[g]	98,103[g]	108,558[g]	108,558[g]	108,558[g]
%ASU	0	1.03%	.88%	.875%	.82%	.83%	.78%

Footnotes on next page.

TABLE 11 (XI)—Continued

MISSISSIPPI STATE APPROPRIATIONS TO LAND GRANT ACTIVITIES AT MISSISSIPPI STATE UNIVERSITY AND ALCORN STATE UNIVERSITY, 1980-86

FOOTNOTES

[a] From Deposition of R. G. Seals, 1981-Jackson, Mississippi.

[b] Does not include "other" Funds such as sales, county sources, etc.

[c] Includes Agriculture and Home Economics.

[d] Includes only agriculture.

[e] From MAFES Financial Reports.

[f] From ASU Campus Public Service Funds—ASU Financial Report.

[g] From answers to U.S. Interrogatory #30.

UA = Unavailable.

UNITED STATES' EXHIBIT 695n

TABLE 12 (XII)

CHANGES IN CERTAIN STATISTICS AND CHARACTERISTICS IN AGRICULTURAL LAND GRANT ACTIVITIES AT MSU AND ASU, 1981-1986

	MSU		ASU	
	1981	1986[c]	1981[d]	1986[d]
Enrollment	1,846[a]	1,198	196	200[e]
Teaching Faculty	259[a]	357	23	19
Research Faculty and Staff	357[a]	432	4	56
Extension Faculty	190[a]	191	7	13
		202 more off-campus		(on campus) 70 total employed
Joint Appointments	168[a] (1980)	About[b] 70-80 SY's in MAFES	0	25*
# Buildings	422	same[b]	13	16
# Baccalaureate Programs	47	39	7	7
# Master's Programs	14	22	5	2**
# Doctoral Programs	8	15	0	0
Land–acres	25,319	unkn.	1,365	1,365
Faculty in Agric.	–	346	–	12
Faculty–H. E.	–	11	–	7

[a] From Deposition of R. Grant Seals, Jackson, MS 9/21/81

[b] From Deposition of Rodney Foil, Jackson, MS 11/17/86

[c] Bulletin, MS State Univ., March 1986

[d] ASU General Catalog – 1986-88

[e] Deposition of Sam Donald

* Listing in Professorial Faculty and research faculty.

** Possibly due to differences in display in catalog or reorganization.

UNITED STATES' EXHIBIT 695o

TABLE 13 (XIII)

Figures on Building Values in 1981 and 1986, MSU and ASU Agricultural Activities

	1981[a]	1985[b]
Div. of Agric., Forestry and Vet. Med. Office Lab. and classrooms (1978)	(505,309 sq. ft.)	
MAFES, MSU Campus (1980) (Appears not to include office, lab. and classroom for Division indicated above)	$ 6,592,053	$ 6,194,899
Experiment Stations (1980) (Branch)	12,905,124[c]	4,517,302[c]
Vet. Medicine	32,000,000	31,624,164
Total–MSU	54,497,177	42,336,366
ASU	2,483,108	3,296,851[d]
BRANCH STATIONS		
Pontotoc	434,749	
Black Belt	530,314	125,460
Prairie		730,000
Brown Loam	688,932	208,913
Coastal Plain	1,081,568	448,984
Delta	6,775,164	2,146,674
North MS	1,425,727	371,695
Northeast MS	414,599	99,969
South MS	876,910	262,911
Truck Crops	677,061	122,696

[a] From Deposition Materials of R. Grant Seals, Sept. 21, 1981.

[b] From answers to United States Interrogatory #36.

[c] Total for Experiment Stations.

[d] 1986 figure.

UNITED STATES' EXHIBIT 695t

* * * * *

CHAPTER 127

SENATE BILL NO. 253

* * * * *

Agricultural extension work; accepting act of congress.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* WHEREAS, The congress of the United States has passed an act, approved by the president May 8, 1914, entitled "An act to provide for co-operative agricultral extension work between the agricultural colleges in the several states receiving the benefits of the act of congress, approved July 2, 1862, and of acts supplementary thereto, and the United States department of agriculture;" and

WHEREAS, It is provided in section 3 of the act aforesaid that the grants of money authorized by this act shall be paid annually "to each state which shall by action of its legislature assent to the provisions of this act;"

That the assent of the legislature of the state of Mississippi be, and is hereby given to the provisions and requirements of said act, and that the trustees of the Mississippi agricultural and mechanical college be, and they are hereby authorized and empowered to receive all grants of money appropriated under said act, and to organize and conduct agricultural extension work, which shall be carried on in connection with the agricultural and mechanical college of Mississippi, in accordance with the terms and conditions expressed in the act of congress aforesaid.

SEC. 2. That this act shall take effect and be in force from the date of its passage.

Approved April 3, 1916.

* * * * *

UNITED STATES' EXHIBIT 695u

* * * * *

CHAPTER 32

AN ACT in relation to agricultural experiment stations.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That the State of Mississippi hereby accepts the provisions of an act of Congress entitled an act to establish agricultural experiment stations in connection with the colleges established in the several States under the provisions of "an act approved July 2d, eighteen hundred and sixty-two, and acts supplementary thereto, which act was approved March 2d, 1887.

SEC. 2. That the money received by this State under the aforesaid act shall be expended under the direction of the Agricultural and Mechanical College of this State, situated near Starkville; and the "agricultural experiment station" for this State provided for in said act of Congress, shall be established in connection with said college, and the trustees of said college be, and they are hereby authorized to set apart for the use of said station so much of the land and other property belonging to said college as they may deem necessary from time to time.

SEC. 3. Be it further enacted, That this act be in force from and after its passage.

Approved January 31, 1888.

* * * * *

UNITED STATES' EXHIBIT 742a

ALCORN STATE UNIVERSITY
FULL-TIME AND PART-TIME FACULTY DATA

	81-82	82-83	83-84	84-85	85-86
Professor					
Total Full-time	18	19	20	17	15
# Full-time Black	10	10	11	11	9
% Full-time Black	55.5	52.6	55	64.7	60
# Part-time Black					
% Part-time Black					
Associate Professor					
Total Full-time	25	21	23	23	33
# Full-time Black	17	13	13	14	20
% Full-time Black	68	61.9	56.5	60.9	60.6
# Part-time Black					
% Part-time Black					
Assistant Professor					
Total Full-time	50	52	57	56	51
# Full-time Black	34	33	42	39	35
% Full-time Black	68	63.5	73.7	69.6	68.6
# Part-time Black					
% Part-time Black					
Instructor/Lecturer					
Total Full-time	47	49	59	63	60
# Full-time Black	40	42	52	50	44
% Full-time Black	85.1	85.7	88.1	79.4	73.3
# Part-time Black					
% Part-time Black					

UNITED STATES' EXHIBIT 742c

JACKSON STATE UNIVERSITY
FULL-TIME AND PART-TIME FACULTY DATA

	81-82	82-83	83-84	84-85	85-86
Professor					
Total Full-time	38	59	57	61	66
# Full-time Black	36	35	35	43	41
% Full-time Black	94.7	59.3	61.4	70.5	66.7
# Part-time Black	*	*	*	*	*
% Part-time Black	*	*	*	*	*
Associate Professor					
Total Full-time	75	95	92	91	90
# Full-time Black	58	58	58	64	56
% Full-time Black	77.3	61	63	70.3	62.2
# Part-time Black	*	*	*	*	*
% Part-time Black	*	*	*	*	*
Assistant Professor					
Total Full-time	121	119	109	101	106
# Full-time Black	87	83	80	74	72
% Full-time Black	71.9	69.7	73.4	73.3	67.9
# Part-time Black	*	*	*	*	*
% Part-time Black	*	*	*	*	*
Instructor/Lecturer					
Total Full-time	52	63	51	44	56
# Full-time Black	49	56	47	40	45
% Full-time Black	94	89	92	91	80
# Part-time Black	*	*	*	*	*
% Part-time Black	*	*	*	*	*
Distinguished Professor					
Total Full-time	0	0	0	0	0
# Full-time Black	0	0	0	0	0
% Full-time Black	0	0	0	0	0
# Part-time Black	0	0	0	0	0
% Part-time Black	0	0	0	0	0

* These figures unavailable.

UNITED STATES' EXHIBIT 742f

MISSISSIPPI VALLEY STATE UNIVERSITY
FULL-TIME AND PART-TIME FACULTY DATA

	81-82	82-83	83-84	84-85	85-86
Professor					
Total Full-time	19	21	22	21	23
# Full-time Black	12	12	13	12	14
% Full-time Black	63.6	57.1	44.9	57.1	60.9
# Part-time Black	**	**	**	**	**
% Part-time Black	**	**	**	**	**
Associate Professor					
Total Full-time	29	23	21	25	25
# Full-time Black	26	21	19	20	19
% Full-time Black	89.7	91.3	90.5	80	76
# Part-time Black	**	**	**	**	**
% Part-time Black	**	**	**	**	**
Assistant Professor					
Total Full-time	66	60	43	43	45
# Full-time Black	50	45	40	33	34
% Full-time Black	75.8	75	93	76.7	75.6
# Part-time Black	**	**	**	**	**
% Part-time Black	**	**	**	**	**
Instructor/Lecturer					
Total Full-time	33	32	22	21	20
# Full-time Black	26	27	18	17	16
% Full-time Black	78.8	84.4	81.8	80.9	80
# Part-time Black	**	**	**	**	**
% Part-time Black	**	**	**	**	**
Distinguished Professor					
Total Full-time	0	0	0	0	0

** Separate full-time and part-time figures unavailable.

UNITED STATES' EXHIBIT 744b

ADMISSION STANDARDS
(includes February 1981 Board actions but not July 1982)

I. Admission to and attendance in all institutions of higher learning under the jurisdiction of this Board is a benefaction of the law, and any person seeking such privilege through attendance at any of the state institutions of higher learning must comply with such conditions as may be imposed by the Board of Trustees. The Executive Officer of each institution is authorized to admit a student meets all requirements, or permit a student to continue in attendance at any institution, when in his judgment such student may reasonably be expected to profit from attendance at the institution and when such attendance may be expected to contribute to the welfare of the institution and the state.

II. Every person seeking to attend a state institution of higher learning in Mississippi must make application according to regulations adopted by the Board of Trustees. Such regulations may be revised or changed by the institution or the Board of Trustees at any time without notice. Any application submitted must state the admission period sought and may be acted upon for the stated period only and cannot be considered a continuing application. In the event an application is denied or an applicant is not admitted upon said application, a new application is required for subsequent consideration at the same or any later term.

III. The application of a non-resident of the State of Mississippi may be considered or not at the option of the executive officer of the institution. The definitions and conditions governing the resident status of

applicants for admission to any of the institutions shall be as follows:

A. *Residence of a minor*
The residence of a person less than twenty-one (21) years of age is that of the father. After the death of the father, the residence of the minor is that of the mother. If the parents are divorced, the residence of the minor is that of the parent who was granted custody by the court; or, if custody was not granted, the residence continues to be that of the father. If both parents are dead, the residence of the minor is that of the last surviving parent at the time of that parent's death, unless the minor lives with a legal guardian of his person, duly appointed by a proper court of Mississippi in which case his residence becomes that of the guardian.

B. *Residence of an adult*
The residence of an adult is that place where he is domiciled, that is, the place where he actually physically resides with the intention of remaining there indefinitely or of returning there permanently when temporarily absent.

* * * * *

J. *Certification of residence of military personnel*
A military person on active duty stationed in Mississippi who wishes to avail himself or his dependents of the provisions of paragraph H, must submit a certificate from his military organization showing the name of the military member; the name of the dependent, if for a dependent; the name of the organization of assignment and its address (may not

be in the letterhead); that the military member will be on active duty stationed in Mississippi on the date of registration at the State-supported institution of higher learning or junior college of the State of Mississippi; that the military member is not on transfer orders; and the signature of the Commanding Officer, the Adjutant, or the Personnel Officer of the unit of assignment with signer's rank and title. A military certificate must be presented to the registrar of the State-supported institution of higher learning or junior college of the State of Mississippi each semester or tri-semester at (or within ten (10) days prior to) registration each semester for the provisions of paragraph H above hereof to be effective.

IV. *Admissions standards*
As approved by the Board of Trustees admission standards for the individual institutions are as follows:

A. *Alcorn State University*

1. A minimum of a thirteen (13) composite score on the ACT is required.
2. In addition to students admitted with a thirteen (13) composite score on the ACT, the institution may enroll a number equivalent to ten (10) percent of the previous year's fall term enrollment with an ACT composite score of nine (9) and up to the current minimum admissions standard.
3. Students who score below twelve (12) on the English and/or mathematics portion

of the ACT must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

B. *Jackson State University – Mississippi Valley State University*

1. A minimum of a ten (10) composite score on the ACT is required.
2. In addition to students admitted with a ten (10) composite score on the ACT, the institution may enroll a number equivalent to five (5), percent of the previous year's freshman class enrollees (for summer, fall, spring terms) to accommodate talented and/or high risk students with an ACT composite score of nine (9). Students with less than 27 semester hours credit may be counted to determine the number of freshmen for this purpose. A student may be counted in any one of the enrollment terms during the fiscal year, but not more than once during the same year.
3. Students with a nine (9) composite score on the ACT who have a 3.0 grade point average on a 4.0 scale or who rank in the upper fifty percent of their graduating class will be exempt from the institution's five (5) percent flexibility allowance.
4. Students who score below twelve (12) on the English and/or mathematics portions of the ACT must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

C. *Delta State University – Mississippi State University – Mississippi University for Women – University of Mississippi – University of Southern Mississippi*

1. A minimum of a fifteen (15) composite score on the ACT is required.
2. In addition to students admitted with a fifteen (15) composite score on the Act, the institution may enroll a number equivalent to five (5) percent of the previous year's freshman class enrollees or fifty (50) students (for summer, fall, and spring terms) to accommodate talented and/or high risk students with an ACT composite score of nine (9) and up to the current minimum admissions standards of that particular institution. Students with less than 27 semester hours credit may be counted to determine the number of freshmen for this purpose. A student may be counted in any one of the enrollment terms during the fiscal year, but not more than once during the same year.

UNITED STATES' EXHIBIT 763a

INTERROGATORY NO. 27:

Please provide the following information with respect to institution administrators (e.g., President, Vice President) for each institution from 1981-82 to the present.

(a) full name and position to which the person was appointed
(b) race
(c) date of appointment, and date of termination, if applicable
(d) reason for the termination
(e) the appointee's former position

ANSWER:

ALCORN STATE UNIVERSITY

(1) (a) Walter Washington; President
(b) Black
(c) Appointed July 19, 1969
(d) N/A
(e) Former President of Utica Junior College, Utica, Mississippi

(2) (a) Rudolph E. Waters; Vice President
(b) Black
(c) Appointed July 1970
(d) N/A
(e) Formerly Dean of Instruction at Alcorn State University

UNITED STATES' EXHIBIT 763b

DELTA STATE UNIVERSITY

(1) (a) Kent Wyatt; President
(b) White
(c) July 1, 1975
(d) N/A
(e) Administrative Assistant to the President, DSU

(2) (a) W. Frank McArthur; Vice President for Academic Affairs
(b) White
(c) July 1, 1981
(d) N/A
(e) Dean, School of Arts and Sciences, North Alabama

UNITED STATES' EXHIBIT 763c

JACKSON STATE UNIVERSITY

(1) (a) John A. Peoples; President
(b) Black
(c) 1964 and 1984
(d) Resignation
(e) Vice President

(2) (a) James A. Hefner; President
(b) Black
(c) 1984
(d) N/A
(e) Provost, Tuskegee University

(3) (a) Everette Witherspoon; Executive Vice President
(b) Black
(c) 1984
(d) N/A
(e) Dean, School of Education at another institution

(4) (a) Estus Smith; Vice President for Academic Affairs
(b) Black
(c) 1972 and 1984
(d) Resignation
(e) Dean, School of Liberal Studies at JSU

(5) (a) F.C. Richardson; Vice President for Academic Affairs
(b) Black
(c) 1984 and 1985
(d) Resignation
(e) Director, Division of Arts and Sciences at another institution

(6) (a) Frank S. Black; Vice President for Academic Affairs
(b) Black
(c) 1985
(d) N/A
(e) Associate Dean for Academic Affairs at another institution

(7) (a) Paul Purdy; Vice President for Fiscal Affairs
(b) Black
(c) 1972 and 1982
(d) Resignation
(e) Director of Campus Union at JSU

(8) (a) Marvell Turner; Vice President for Fiscal Affairs
(b) Black
(c) 1982
(d) N/A
(e) Senior Vice President, Business Affairs at another institution

(9) (a) James Petrovich; Vice President for Budget Management and Planning
(b) White
(c) 1984
(d) N/A
(e) Vice President for Fiscal Affairs at another institution

(10) (a) J.T. Robinson; Vice President for University Relations
(b) Black
(c) 1974
(d) N/A
(e) Director of Placement at JSU

UNITED STATES' EXHIBIT 763d

MISSISSIPPI STATE UNIVERSITY

(1) (a) James Donald McComas; President
(b) White
(c) July 1976 and July 1985
(d) Accepted Presidency of another university
(e) Dean of College of Education, University of Tennessee, Knoxville

(2) (a) Donald Wayne Zacharies; President
(b) White
(c) September 1, 1985
(d) N/A
(e) President, Western Kentucky University, Bowling Green

(3) (a) Theodore Krinn Martin; Vice President
(b) White
(c) July 1, 1966 and January 2, 1985
(d) Retirement
(e) Executive Assistant to the President and Professor of English

(4) (a) Robert Earl Wolverton; Vice President for Academic Affairs
(b) White
(c) July 1, 1977 and July 31, 1985
(d) Returned to teaching
(e) President, Mount St. Joseph on the Ohio, Cincinnati, Ohio

(5) (a) Louis Neal Wise; Vice President for Agriculture, Forestry, and Veterinary Medicine
(b) White
(c) April 1, 1966 and April 30, 1986
(d) Retirement
(e) Dean, College of Agriculture

(6) (a) Robert Rodney Foil; Vice President for Agriculture, Forestry, and Veterinary Medicine
(b) White
(c) June 1, 1986
(d) N/A
(e) Director of Mississippi Agricultural and Forestry Station

(7) (a) George Leslie Verrell; Vice President for Business Affairs
(b) White
(c) November 15, 1979
(d) N/A
(e) Associate Dean of Business and Industry and Associate Professor of Economics

(8) (a) Marion Theo Loftin; Vice President for Graduate Studies and Research
(b) White
(c) January 17, 1980 and September 10, 1985
(d) Retirement
(e) Dean of Graduate School

(9) (a) Ralph Edward Powe; Vice President for Research
(b) White
(c) July 17, 1986
(d) N/A
(e) Associate Vice President for Research

(10) (a) Robert Louis Jones; Vice President for Student Affairs
(b) White
(c) July 1, 1967 and September 15, 1984
(d) Accepted Vice Presidence for Administration, University of Texas, Tyler
(e) Assistant to Vice President, University of Arkansas Medical Center

(11) (a) Roy Harris Ruby; Vice President for Student Affairs
(b) White
(c) April 15, 1985
(d) N/A
(e) Dean of Student Administrative Services

UNITED STATES' EXHIBIT 763e

MISSISSIPPI UNIVERSITY FOR WOMEN

(1) (a) James W. Strobel; President
(b) White
(c) July 1977
(d) N/A
(e) Professor and Head of Horticultural Sciences Department at North Carolina State University
(2) (a) James T. Murrell, Jr.; Vice President for Academic Affairs
(b) White
(c) January 1982
(d) N/A
(e) Associate Professor at University
(3) (a) Delene W. Lee; Vice President for Financial Affairs
(b) White
(c) January 1981
(d) N/A
(4) (a) Joseph A. Portera; Vice President and Assistant to the President
(b) White
(c) September 1969
(d) N/A
(5) (a) Gloria W. Raines; Vice President for Student Affairs
(b) White
(c) November 1977 and December 1982
(d) Accepted another position

(6) (a) Rosemary B. Hayslett; Acting Vice President for Student Affairs
(b) White
(c) January 1983
(d) Not terminated but title changed to Director of Student Affairs July 1, 1986

(7) (a) O. W. Smith; Vice President of External Affairs
(b) White
(c) July 1978
(d) Not terminated but job title changed August 1984

UNITED STATES' EXHIBIT 763f

MISSISSIPPI VALLEY STATE UNIVERSITY

(1) (a) Joe Boyer; President
(b) Black
(c) January 1982
(d) N/A
(e) Head of Department of Foundations, Secondary and Counselor Education at Auburn University at Montgomery

(2) (a) Nathaniel Boclair; Vice President
(b) Black
(c) July 1982
(d) N/A
(e) Dean of Education at MVSU

UNITED STATES' EXHIBIT 763g

UNIVERSITY OF MISSISSIPPI

(1) (a) Porter Fortune; Chancellor
(b) White
(c) February 1968 and April 1984
(d) Assumption of Chancellor Emeritus and Distinguished Professor History Positions
(e) National Executive Secretary of the National Exchange Club

(2) (a) Robert Gerald Turner; Chancellor
(b) White
(c) April 1984
(d) N/A
(e) Vice President of Executive Affairs, University of Oklahoma

(3) (a) Harvey Shelton Lewis; Executive Vice Chancellor
(b) White
(c) July 1981 and September 1983
(d) Accepted another position
(e) Vice Chancellor and Professor of Economics and Banking at UM

(4) (a) Bela J. Chain, Jr.; Acting Executive Vice Chancellor
(b) White
(c) October 1983 and April 1984
(d) Returned to permanent position
(e) Director of Personnel and Associate Professor of Educational Administration at UM

(5) (a) Peter E. Wagner; Vice Chancellor for Academic Affairs
(b) White
(c) December 1981 and September 1984
(d) Accepted another position
(e) Professor of Physics, University of Alabama in Huntsville

(6) (a) Gerald W. Walton; Acting Vice Chancellor for Academic Affairs
(b) White
(c) October 1984 and June 1985
(d) Returned to permanent position
(e) Associate Vice Chancellor for Academic Affairs

(7) (a) Morris L. Marx; Vice Chancellor for Academic Affairs
(b) White
(c) June 1985
(d) N/A
(e) Interim Dean, College of Arts and Science, University of Oklahoma

(8) (a) Doyle Lamar Russell; Vice Chancellor for Administration
(b) White
(c) Appointed Acting Vice Chancellor on July 1981 and appointed permanently in July 1982
(d) N/A
(e) Director of Accounting and Budgeting at UM

(9) (a) Franklin Edwin Moak; Acting Vice Chancellor for Student Affairs
(b) White
(c) July 1981 and March 1982
(d) Returned to permanent position
(e) Dean of the Division of Student Personnel

(10) (a) Thad Gordon Beasley; Vice Chancellor for Student Affairs
(b) White
(c) March 1982
(d) N/A
(e) Vice President for Student Affairs, University of Arkansas

(11) (a) Robert C. Khayat; Vice Chancellor for University Affairs
(b) White
(c) May 1984
(d) N/A/
(e) Associate Dean of School of Law and Professor of Law at UM

UNITED STATES' EXHIBIT 763h

UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

(a) Norman Crooks Nelson; Vice Chancellor for Health Affairs (Chief Executive Officer)
(b) White
(c) July 1973
(d) N/A
(e) Dean of the School of Medicine at Louisiana State University

UNITED STATES' EXHIBIT 763i

UNIVERSITY OF SOUTHERN MISSISSIPPI

(1) (a) Aubrey K. Lucas; President
(b) White
(c) July 1975
(d) N/A
(e) President of Delta State University

(2) (a) Shelby F. Thames; Executive Vice President
(b) White
(c) July 1982
(d) N/A
(e) Vice President for Administration at USM

(3) (a) James H. Simms; Vice President for Academic Affairs
(b) White
(c) July 1982
(d) N/A
(e) Dean of Liberal Arts at USM

(4) (a) Thomas G. Estes, Jr.; Vice President for Business and Finance
(b) White
(c) July 1976
(d) N/A
(e) Assistant Director of the Division of Continuing Professional Education for the American Institute of Certified Public Accountants

(5) (a) Peter Easton Durkee; Vice President for Student Affairs
(b) White
(c) July 1976
(d) N/A
(e) Dean of Students at USM

(6) (a) Karen M. Yarbrough; Vice President for Research and Extended Services
(b) White
(c) July 1982
(d) N/A
(e) Acting Vice President for Academic Affairs at USM

UNITED STATES' EXHIBIT 817

BULLETIN OF DELTA STATE UNIVERSITY
(USPS 152-880)
Cleveland, Mississippi 38733

Founded April 9, 1924
Opened September 25, 1925

UNDERGRADUATE ANNOUNCEMENTS
SIXTY-SECOND SESSION
1986-87

CATALOG
1985-86
[SEAL OMITTED]

This bulletin presents information which, at the time of preparation for printing, most accurately describes the course offerings, policies, procedures, regulations, and requirements, of the University. However, it does not establish contractual relationships. The University reserves the right to alter or change any statement contained herein without prior notice.

Volume 62 **January 1986** **Number 1**

PUBLISHED QUARTERLY BY DELTA STATE UNIVERSITY
CLEVELAND, MISSISSIPPI 38733

Entered as Second-Class Matter July, 1926, at the Post Office at Cleveland, Mississippi, Under the Act of February 28, 1925. Postmaster: Send change of address to Delta State University, Cleveland, Mississippi 38733.

ADMISSION AND CLASSIFICATION

A new student seeking admission to Delta State University must complete the following procedure:

1. *Complete a formal Application for Admission.* Application should be received by the Director of Admissions at least twenty days prior to the opening of the term in which the student desires to enroll.
2. *Request a copy of all previous school records* be sent to the Director of Admissions at least two weeks prior to the date of entrance. All records must be mailed DIRECTLY from official records office of the school or college which the applicant previously attended to: Director of Admissions, Delta State University, Cleveland, Mississippi 38733.
3. *Submit the results of the American College Test.* If official scores are not on file at Delta State, request forms may be obtained from the Office of Admissions.
4. Document proof of immunization for Measles and Rubella.

ADMISSION REQUIREMENTS FOR FRESHMEN:

1. HIGH SCHOOL COURSE REQUIREMENTS
Beginning with the fall term of 1986, all entering freshmen students must have earned the following high school units in grades 9-12:

Subject	Units
English	4—All must require substantial writing components.
Mathematics	3—Algebra I, Geometry, and Algebra II.
Sciences	3—Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of those chosen must be laboratory based.
Social Sciences	2½—Must include United States History and American Government.
Required Elective	1—Choose from a foreign language or mathematics [above Algebra II] or a science [chosen from the science courses shown above].

It is also recommended that students pursue two units of foreign languages, take a mathematics course during their senior year, take a computer science course, and gain a level of typing proficiency.

Any student with an ACT assessment composite score of 24 or above is exempt from the high school units requirement.

Any student with less than the composite score of 24 who has a deficiency in the required high school units may be exempt from an area of deficiency by having an ACT assessment subtest score of at least 18 on the appropriate subtest. The option is not available for any student with more than one deficiency.

2. ACT REQUIREMENT:

A minimum of a fifteen [15] composite score on the ACT is required.

Out-of-state students enrolling as first-time entering freshmen must present a minimum Composite ACT score of 15 or a Scholastic Aptitude Test [SAT] score of 700.

3. First-time entering freshmen foreign students must present a minimum ACT score of 20 or a comparable SAT score and must also present a minimum score of 525 on the Test of English as a Foreign Language (TOEFL).

IMMUNIZATION REQUIREMENTS:

All students [including transfers] entering Delta State for the first time and enrolling for academic credit must document proof of immunization for measles and rubella.

a. Proof of immunization may be documented in the following manner:
   (1) Documentation (month and year) of immunization which was received after the first birthday;
   (2) Positive measles and rubella serology titer with date;
   (3) Physician-documented history of having had measles with date of the disease. History of rubella is not acceptable.

b. Temporary exceptions—one semester:
   (1) Pregnant women;
   (2) Women suspecting pregnancy;
   (3) Women anticipating pregnancy within three months.

c. Permanent exception:
   (l) Medical disease which will cause a permanent contraindication to immunization;
   (2) All persons born prior to 1957.

DEVELOPMENTAL COURSE REQUIREMENTS:

Students who score below twelve (12) on the English portion of the ACT (300 SAT verbal) and/or twelve (12) on the mathematics portion of the ACT (350 SAT quan-

titative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

REQUIREMENTS FOR TRANSFERS:

1. A student who was eligible for admission to the freshmen class at Delta State but chose to attend another institution may transfer at any time as long as the student has a "C" average or better and is eligible to return to the institution.
2. Any student who was *not* eligible for admission to the freshman class must attend an accredited institution of higher learning other than one of Mississippi's eight state supported universitities and attain a "C" average (2.0 G.P.A. on a 4.0 scale) in the following 24 semester credit hours.

6 semester hours	English Composition
3 semester hours	College Algebra or above
6 semester hours	Laboratory Science
9 semester hours	Transferable Electives

3. A student on academic probation at another college, if otherwise acceptable, is admitted to Delta State University on probation. A student excluded from another college because of academic suspension may be considered for admission to Delta State University on probationary status after remaining out of college for one semester.

ADMISSION OF NON-DEGREE STUDENTS. Students over 21 years of age who do not have an ACT score or a score which does not meet minimum admission requirements may register as a non-degree student. They may register for a maximum of twelve (12) semester hours for one semester. Regular student status may be achieved by

meeting the regular admissions standards (including ACT) or by completing a minimum of twelve (12) semester hours with a "C" average.

TRANSFER CREDIT. A junior college graduate who transfers to Delta State University and who has pursued a sound academic program in the junior college should be able to meet the additional requirements to graduate from Delta State University in two academic years. Each department chairman with the approval of an appropriate school dean is authorized to make any reasonable substitutions in course requirements in order not to prolong the residence of junior college transfers. Any junior college transfer who seems to suffer an undue loss of credit is invited to confer with the Vice President for Academic Affairs. It is understood that any student graduating from Delta State University must have an overall grade of "C" on all academic hours required toward the degree. A student enrolled in a junior college for the first two years who plans to enter Delta State University upon graduation should follow the general requirements outlined in the Delta State University catalog for the degree sought.

CREDIT BY EXAMINATION. A maximum of 30 semester hours of undergraduate credit may be earned from the following sources: The Advanced Placement Test, College Level Examination Program (CLEP), and the American College Testing Program.

CREDIT FOR MILITARY SERVICE. A student who has been in active military service for two calendar years or longer may submit a copy of his separation notice (DD Form 214) and receive up to four semester hours of credit in physical education activity courses.

Recommendations of the American Council on Education are used in determining credit allowed for the courses completed in military service schools.

CLASSIFICATION OF STUDENTS. The following schedule is used in classifying students:

Freshmen	0-26 semester hours
Sophomores	27-53 semester hours
Juniors	54-86 semester hours
Seniors	87 and over semester hours
Part-time Undergraduate	less than 12 semester hours
Part-time Graduate	less than 9 semester hours

Supreme Court, U.S.
FILED
JUL 9 1991
OFFICE OF THE CLERK

(19) (10)

Nos. 90-1205 and 90-6588

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR. ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX – VOLUME II

MIKE MOORE
Attorney General
State of Mississippi
450 High Street, 5th Floor
Jackson, Mississippi 39201
WILLIAM F. GOODMAN, JR.
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Watkins & Eager
400 East Capitol Street
Jackson, Mississippi 39201
Counsel for Ray Mabus, et al.

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel for the United States
ALVIN O. CHAMBLISS, JR.
North Mississippi Legal Services
1006 Jackson Avenue
Oxford, Mississippi 38655
ROBERT PRESSMAN
Center for Law and Education
955 Massachusetts Avenue, Suite 13A
Cambridge, Massachusetts 02139
Counsel for Jake Ayers, Jr. et al.

PETITIONS FOR WRITS OF CERTIORARI FILED JANUARY 28, 1991 (No. 90-1205) AND DECEMBER 17, 1990 (No. 90-6588)
CERTIORARI GRANTED APRIL 15, 1991

407

In the Supreme Court of the United States

OCTOBER TERM, 1991

Nos. 90-1205, 90-6588

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR., ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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nasium, Newell-Grissom Livestock Building, Etheredge Chemical Engineering Building, Memorial Hall, Stafford Hall, Freeman Hall, Briscoe Hall, Moore Hall, Hilbun Hall, Walker Engineering Building, Ballew Animal Science Building, Hand Chemical Laboratory Building, Dorman Hall, Edwards Reactor Laboratory, Scales Veterinary Science Building, Herzer Dairy Science Building, Clay Lyle Entomology Research Laboratory, McCool Hall, Cobb Institute of Archaeology, Allen Hall, Simrall Electrical Engineering Building, Industrial Education Building, the College of Veterinary Medicine Complex, Music Building B, Plant Pathology Complex, Raspet Flight Research Laboratory, Research Building A, Research Building B, and the Creative Arts Complex.

There are twenty single-student living units on the campus: Cresswell, Herbert, Hull, Evans, Garner, Smith, Critz, Butler, Duggar, Hightower, McKee, Sessums, Hamlin, Hathorn, Suttle, Rice, McArthur, Stone, Hardy, University Drive Apartments and Arbour Acres.

Other structures are the Colvard Union Building, ROTC Building, Band Hall, Lloyd-Ricks Building, Power Plant, YMCA, Cafeteria, Roberts Laundry, Turman Field House, Petroleum Products Laboratory, Auxiliary Plaza, Blumenfeld Swimming Pool, Intramural Gymnasium, Student Health Center, Chapel of Memories, E. E. Cooley Building, R. T. Clapp Forest Products Laboratory, Gast Boll Weevil Rearing Laboratory, Pace Seed Technology Laboratory, Fish Disease and Nutrition Building, A. B. McKay Food and Enology Laboratory, Humphrey Coliseum, Robert D. Williams Alumni House, W. M. Bost Cooperative Extension Center, Bulldog Physical Fitness Building, one hundred nine faculty and staff housing units, Receiving Station, Scott Field, Shira Field House, Maddox Track and Athletic Fields, Dudy Noble Field, Campus Landscape Facilities, Transportation Facilities,

Pitts Tennis Courts, Spencer Track Stadium, and the President's Home.

Agricultural research is accomplished on the MAFES Plant Science Farm comprising approximately 560 acres of land, 10 greenhouses, and 43 structures, and on the MAFES Animal Sciences Farm, which has 1,650 acres and 52 structures.

II. ADMISSION TO THE UNIVERSITY

A. COLLEGE AND SCHOOL RELATIONS

Admission counselors visit high schools and junior colleges to assist students in making a smooth transition to Mississippi State University, by answering questions about admissions, financial aid, housing, academic programs, fees and expenses, orientation, cooperative education, extracurricular activities, ROTC and other areas of concern. Prospective students and parents are encouraged to visit the campus, to meet students and professors, and to get an overall view of what the campus is like. To make an appointment, write to the Director of College and School Relations, P. O. Box NN, Mississippi State, Mississippi 39762, or call (toll free in Mississippi) 1-800-222-1810, extension 3076. Outside Mississippi, telephone (601) 325-3076.

B. ADMISSIONS

Applicants. The applicant for enrollment on the campus is advised to submit the application for admission and supportive documents at least 20 days prior to the date of registration. Applications received after this date may cause the applicant to register late.

Admission notices are mailed to students as far as possible in advance of the date the semester begins. Detailed instructions for a student's guidance are attached to the notice of admission.

All correspondence having to do with admissions should be addressed to the Director of Admissions, P. O. Box 5268, Mississippi State, Mississippi 39762.

1. Freshman Entrance Requirements

a. Regular Admission. Freshmen applicants for regular admission may be admitted to Mississippi State University provided the following requirements are met:

(1) The applicant must have graduated from an approved secondary school.

(2) The applicant must submit an official American College Test (ACT) score. Applicants who have a composite ACT score of 15 will be eligible for consideration for admission. Non-resident applicants may submit a Scholastic Aptitude Test (SAT) score of 720 in lieu of ACT.

(3) Effective with the Fall semester of 1986, to enroll as a freshman in any of the programs of study at this university, one must have earned in grades 9-12, at a minimum, the units shown in the following table. (Some programs of study may require additional specific units.)

Subject:	Units:
English	4 – All must require substantial writing requirements.
Mathematics	3 – Algebra I, Algebra II, and Geometry.

*Science	3 – Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of these chosen must be laboratory based.
Social Science	2½ – Must include United States History and American Government.
Required Electives	1 – May be chosen from among Foreign Language, Mathematics above Algebra II or a Science chosen from the Science courses listed above.
**Free Electives	1½ – May be chosen from any of those accepted toward graduation by the applicant's high school.

Any student with an ACT composite score of 24 or an SAT composite score of 1000 is exempt from the high-school units requirement.

Any student with less than the ACT composite score of 24 who has a deficiency in the high-school units may be exempt from an area of deficiency by having an ACT subtest score of 18 on the appropriate subtest. This option is not available for any student with more than one deficiency.

A student athlete must meet the requirements of the Southeastern Conference and the National Collegiate Athletic Association (N.C.A.A.). Mississippi State University

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* One unit in chemistry is required for Engineering majors.

** It is also recommended that students pursue two units of foreign language, take a mathematics course during their senior year, take a computer science course, and gain a level of typing proficiency.

neither awards credit nor accepts transfer-college credit based solely on ACT, SAT, or other comparable tests commonly administered to high-school students primarily for college admissions purposes. Documents and other proof that students have met the University entrance requirements are kept on file in the Admissions Office, Room 111, Allen Hall.

b. Probationary Admission. A limited number of freshmen applicants whose ACT composite scores do not meet the minimum for regular admission may be considered for admission. Probationary admission accommodates talented and/or high-risk students who demonstrate potential to make satisfactory progress in the University.

c. Developmental Studies. Entering freshmen who have been admitted but have less than a score of 12 on the English, Mathematics and/or Social Science sub-tests of the ACT MUST schedule appropriate developmental courses in accordance with Board of Trustees regulations. The appropriate courses are **EN 0003—Developmental English, LSK 0003—Developmental Reading** and **MA 0003—Developmental Mathematics.** Students are afforded an opportunity to "test-out" during the first week of classes and at other times during the semester as approved by the instructor. Students may not enroll in any other English, Reading or Mathematics course before satisfactory completion of a required developmental course. No student may graduate from the University without satisfactorily completing all required developmental courses. No developmental course will satisfy any credit course requirement for any degree at the University. Students who receive two unsatisfactory grades (F or U) in the same developmental course will **not** be readmitted to the University until the developmental course requirement is satisfied by completion of the appropriate test-out. Failure to attend at least 75% of the class meetings in a developmental course will result in an unsatisfactory grade in the course.

d. Early Admission. A superior secondary-school student may be admitted to the freshman class as an EARLY ADMISSION if he/she (a) has earned a minimum of fifteen (15) acceptable credits, (b) has earned a standard composite ACT score of 23 or an SAT combined score of 960, (c) ranks in the upper twenty-five (25) per cent of his/her high-school class, and (d) is recommended for early admission in a letter from his/her high-school principal.

e. Summer Program for Academically Talented Students (SPATS). Academically talented students who (a) have finished at least their junior year in high school, as judged by their high-school officials, (b) in the judgment of parents and high-school administrators are mature enough to profit from a summer's work in college, (c) rank in the top ten per cent of their class academically, and (d) have a standard composite minimum score of 23 on the American College Test, may apply for admission to a special summer program in which they may earn regular college credit.

A SPATS student may take a maximum of 6 credit hours (two courses) each summer term, selected from a list available for credit under this program. Courses taken must not be the equivalent of those which the student will take in the senior year of high school. Students are expected to return to high school and finish a normal senior year. The courses may not be substituted for high-school credits to meet college admission requirements. Credit is reserved until the student has graduated from high school. Information concerning the program and application forms may be obtained by writing to: Director, Summer Program for Academically Talented Students, Box EH, Mississippi State, MS 39762.

f. Admission by Examination. An applicant who has not graduated from high school may be admitted on the basis of successful completion of the General Educational Development Test (high-school level), if all other admission requirements are met, provided his/her high school class has been graduated, and he/she has not been enrolled in high school for a year (two semesters) immediately prior to his/her admission. In addition, he/she must also present an acceptable ACT score to be admitted to a degree program.

g. Admission to the College of Veterinary Medicine. (See College of Veterinary Medicine section in Part II.).

2. Special Non-Degree Classification.

An applicant who is twenty-one (21) years old and who does not meet the regular admission requirements, may apply to schedule courses in the Special Non-Degree category. Applicants must demonstrate adequate preparation for the courses they plan to schedule. A maximum of twelve (12) semester hours may be scheduled during a regular term and three (3) semester hours during a five-week summer term. After satisfactorily completing twelve (12) semester hours with a C average, a student may apply to the University Registrar for reclassification as a regular student. To change to a degree program, the student must meet the same standards required for admission of transfer applicants. Once admitted to a degree program, a maximum of eighteen (18) semester hours credit earned in a non-degree classification may be counted toward a baccalaureate degree, if approved by the dean of the college/school from which the degree is sought.

3. Admission of Transfer Students.

Transfer applicants who initially meet the freshman admission requirements at Mississippi State University (listed

under Freshman Entrance Requirements), but choose to enroll at another institution, may transfer at any time provided the following provisions are met:

(a) The applicant submits a formal application.
(b) The applicant submits an official transcript from each college or university attended.
(c) The applicant is in good standing at the last college or university attended.
(d) The applicant submits a minimum American College Test (ACT) composite score of 15 or Scholastic Aptitude Test (SAT) composite of 720.
(e) The applicant has a cumulative grade-point average of 2.00 on a 4.00 scale. (Based on method of computing GPA at Mississippi State University.) An applicant whose grade point is less than 2.00 should contact the Director of Admissions so that his/her admission status may be determined.

Transfer applicants whose ACT composite score is below 15 or SAT score is below 720 and/or who do not meet the unit requirements listed under Freshman Entrance Requirements must have attended a regionally accredited institution and attained a C average (2.00 CPA on a 4.00 scale) in the following 24 credit hours.

6 semester hours English Composition
3 semester hours College Algebra or above
6 semester hours Laboratory Science
9 semester hours transferable electives

Satisfying these transfer requirements will also relieve the student of developmental course obligations state under the Developmental Studies section.

Transfer work earned from a non-regionally-accredited institution is not acceptable at Mississippi State University and an applicant applying for admission must meet the admission requirements as an entering freshman.

Transfer Credits. Credits transferred from accredited institutions are reproduced on the permanent records of Mississippi State University. In the case of students receiving VA benefits, enrollment certificates submitted to the Veterans Administration will reflect proper credit for previous education and training. This is done as a convenience for the student in providing him/her with an accurate consolidated record of his/her entire college career. This action is evidence that the credits are considered valid. **Validity,** however, is not to be confused with **acceptability** or **applicability.**

Transfer hours passed will be accepted. To meet graduation requirements, a transfer student must have an overall C (2.00) average, calculated by the method currently in use at Mississippi State University, on all hours scheduled and rescheduled at all institutions attended, including Mississippi State University. Excess quality points earned at other institutions cannot be used to offset any deficiencies at Mississippi State. Acceptance of junior college work is limited to one-half the total requirements for graduation in a given curriculum. The last half of the total hours applied toward graduation must be earned in a senior college.

Applicability of transfer work depends upon the coincidence of transfer credits with the requirements of a particular curriculum. **Applicability** varies from curriculum to curriculum, not only for transfer students from other institutions but for students transferring from one school or curriculum to another within Mississippi State University. In either case, the upper limit of the number of applicable credits is the number of accepted credits. Applicability is determined by the dean of the college or school to which one is admitted.

UNITED STATES' EXHIBIT 820

[SEAL OMITTED]

BULLETIN OF MISSISSIPPI UNIVERSITY FOR WOMEN

1986-1987

January, 1986 **Volume No. 101-102** **No. 4**

Issued five times a year as follows: one in October, one in December, two in January, and one in April (Second-class postage paid at Columbus, Mississippi.)

Bulletin Series

1. The Alumnae News, October and April
2. Announcement of Summer Session, December
3. Summer Session, January
4. General Catalog, January

As a result of the U.S. Supreme Court decision to admit a male student to the Nursing Program at Mississippi University for Women, the Board of Trustees of State Institutions of Higher Learning in its July, 1982, meeting proclaimed coed status for MUW in the following statement:

"The Board of Trustees of State Institutions of Higher Learning reaffirms the mission of Mississippi University for Women as a single sex institution. However, in light of the decision by the U.S. Supreme Court on July 1, 1982. MUW will immediately enroll qualified students in the University regardless of sex."

Continuing Education

Mississippi University for Women offers a variety of supplemental and nontraditional activities designed to meet public and community service needs. These include

conferences, workshops, mini courses, Weekend College, and others.

University Press

Mississippi University for Women is a member of the University Press of Mississippi.

UNDERGRADUATE ADMISSION

Procedure For Applying For Admission

Mississippi University for Women will consider for admission all qualified applicants meeting the following requirements:

1. An application for admission must be submitted by all applicants. Applicants who desire to reside in a dormitory must submit a twenty-five dollar room reservation fee with the housing application.

2. Transcripts for freshmen students must include the following academic subjects:

English
4 units—All must require substantial writing components.

Mathematics
3 units—Algebra I, Geometry, Algebra II.

Science
3 units—Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics and Advanced Physics. One of those chosen must be laboratory based.

Social Science
2½ units—Must include United States History and American Government.

Required Elective
1 unit—Choose from a foreign language or mathematics (above Algebra II) or a science (chosen from the science courses shown above).

Note: It is also recommended that students pursue two units of foreign languages, take a mathematics course during their senior year, take a computer science course and gain a level of typing proficiency.

Exceptions to these requirements include:

(1) Any student with an ACT Assessment composite score of 24 or above is exempt from the board of Trustees' high school units requirements.

(2) Any student with less than the composite score of 24 who has a deficiency in the required high school units may be exempt from an area of deficiency by having an ACT Assessment subtest score of at least 18 on the appropriate subtest. This option is not available for any student with more than one deficiency.

3. Each applicant must submit an acceptable composite score on the ACT battery of tests published by the American College Testing Program, or, for out-of-state students, an acceptable score on the Scholastic Aptitude Test (SAT). The high school principal or counselor or the MUW Director of Admissions will be glad to assist the high school student in arranging to take this test.

4. High School seniors who have earned fifteen units, who have the recommendation of their high school principal, and who meet MUW's admission requirements may enroll on condition as approved by the Director of Admissions.

5. All applicants must submit proof of measles/rubella immunization.

6. Admission to degree programs in nursing has special requirements in addition to the general requirements for admission to the University. These are described on page 21.

7. MUW does not discriminate on the basis of race, color, age, sex, handicap, or national origin.

Admission of Mature Students

Mature students without previous college attendance who wish to enroll in a degree program must submit an acceptable composite score on the ACT battery of tests published by the American College Testing Program. The Director of Admissions will be glad to assist the mature student in arranging to take this test. A high school transcript or GED is also required.

Those students enrolled for the first time who are 21 years of age or older may register without an ACT score. They may register for credit hours up to twelve (12) semester hours during a semester. Degree student status may be achieved by meeting the regular admission standards (including ACT) or by completing a minimum of twelve (12) semester hours or more with a "C" average.

Admission of Transfer Students

Any student who has earned the required high school units but whose ACT composite score is below Mississippi University for Women's minimum required score must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a "C" average (2.0 GPA on a 4.0 scale) in the following 24 semester credit hours:

6 semester hours of English Composition
3 semester hours of College Algebra or above

6 semester hours of Laboratory Science
9 semester hours of Transferable electives

Transfer students are accepted on the basis of the rating of the college from which they desire to transfer, the type of program pursued and the quality of work done at the college level. The transcript must certify that at the next registration the student's grades are such that she is eligible to re-enter the college from which she is transferring. Due to academic performance at another college or university, a student may be admitted to MUW on academic probation as determined by an evaluation of transfer credits. A transcript showing all college work should be sent to the Admissions Office when work has been completed prior to entering MUW. All students must earn at least 30 semester hours at MUW to qualify for an undergraduate degree.

Graduates of accredited junior colleges who transfer to Mississippi University for Women will lose no credit by the transfer but will be required to earn at least 64 semester hours at a senior institution (including 30 semester hours at MUW) before becoming eligible for any degree.

Readmission Warning

Each student is responsible for knowing whether she is eligible to continue in the University. An ineligible student who nevertheless registers in the University shall be dropped. See page 37-grades and academic standards.

GRADUATE ADMISSION

General Requirements for Graduate Study

Courses are offered throughout the eight divisions for which qualified candidates may receive graduate credit, although no degree program is offered at the graduate level except in nursing. Graduate courses in these divisions are

numbered 450 or above. They may be entered by students applying to the Graduate School, presenting a transcript showing a bachelor's degree from an accredited institution, and (if born in 1957 or later and attending the University for the first time) presenting evidence of immunization for measles and rubella.

UNITED STATES' EXHIBIT 821

THE UNIVERSITY OF MISSISSIPPI
1986 UNDERGRADUATE CATALOG

138th Year/134th Session

The University of Mississippi
University, MS 38677
Telephone (601) 232-7226
Or Toll Free in Mississippi: 1-800-222-5102

This catalog is not an unchangeable contract but, instead, an announcement of present policies only. Implicit in each student's matriculation with the University is an agreement to comply with University rules and regulations which the University may modify to exercise properly its educational responsibility.

Admission to the University

Applications • The applicant for admission for enrollment on the Oxford campus (undergraduate or graduate) is advised to submit the application for admission well in advance of the period in which enrollment is sought. Applications are accepted as early as one year prior to the desired enrollment, and applicants are encouraged to apply prior to 20 days before registration. Evaluation of applications received later than 20 days prior to registration may not be possible or may require the applicant to register late.

Applicants may expect to be enrolled, if admitted, in one of the following categories: undergraduate, graduate, law, or special.

Administration of Admissions • Admissions to the University are administered under policies established by state law, the Board of Trustees of State Institutions of Higher Learning, and by the University's faculty. Applications for enrollment on the Oxford campus as an undergraduate or in the Graduate School are submitted to the Office of Admissions and Records, The University of Mississippi, University, MS 38677; for the School of Law, to the Director of Admissions, School of Law, The University of Mississippi, University, MS 38677.

Jackson Campus • After completion of the undergraduate prerequisites, applications for enrollment in medicine, nursing, dentistry, and health related professions are submitted to the Division of Student Services and Records, The University of Mississippi Medical Center, 2500 N. State Street, Jackson, MS 39216.

Certificate of Admission • The applicant must provide accurate and complete responses to the application and related forms, meet all admission requirements and receive a CERTIFICATE OF ADMISSION before registration as a University student is permitted. The University's Committee on Admissions, on request, will review any application or will consider excepting any specific requirements under its control if the applicant can demonstrate the ability to meet the University's expectations.

Immunization Requirement • The Board of Trustees of State Institutions of Higher Learning, in cooperation with the Mississippi State Board of Health, has issued regulations requiring that all entering students whose date of birth is after January 1, 1957, must submit proof of immunization for measles and rubella prior to registration. Forms for documenting immunization or establishing an

exemption to this requirement are available from the Office of Admissions and Records or the Student Health Service, University of Mississippi, University, MS 38677.

Handicapped Services • To become eligible for handicapped services at The University of Mississippi, a student must first verify the diability by presenting a personal evaluation to the Counselor for the Handicapped. This evaluation must be conducted by a qualified examiner. In the case of learning disabilities, the students must contact the Counselor for the Handicapped for information regarding the evaluation requirements. The counselor for the handicapped can refer students to a qualified examiner, but the individual student will be responsible for both scheduling the appointment and for all related examination fees. Once the student's disability has been verified, the Handicapped Enabling Committee will recommend appropriate consideration to the faculty involved.

Freshman Admission • Admission requirements for entering freshmen are based essentially on two factors: scores on standard tests and previous academic performance. An applicant to the freshman class on the Oxford campus may be admitted provided the following requirements are met:

A. Minimum ACT score of 15 or 720 SAT (Mississippi students **must** take the ACT.)

B. High School Units Required[1]

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[1] Applicants to the School of Engineering are required to present additional units in English, mathematics, and natural science. An ACT score of at least 20 or a total SAT score of 870 is also required to enroll. See the School of Engineering section of this catalog.

Subjects		Units Required
English	4	– All must have substantial writing components.
Mathematics	3	– Alegbra I[2], Geometry, Algebra II or above.
Sciences[3]	3	– Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, Advanced Physics. (One unit must be laboratory based.)
Social Sciences	2½	– Must include U.S. History and American Government.
Required Electives	1	– Choose from a foreign language or mathematics (above Algebra II) or a science course from those listed above.

It is also recommended that students pursue two units of foreign language, take a mathematics course during their senior year, take a computer course, and gain a level of typing proficiency.

A Composite ACT score of 24 or SAT score of 1000 exempts students from the specific high school unit requirements.

Students who have no more than one deficiency may be admitted if the appropriate sub-test score on the ACT is at least 18.

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[2] Algebra I taken prior to the 9th grade fulfills the Algebra I requirement but does not negate the need for three units of math in grades 9-12.

[3] Neither "General Science" nor "Physical Science" is acceptable to meet the science requirement.

A limited number of entering freshmen whose *standard test scores* do not meet the minimum for regular admission may be considered for probationary admission. This exception is to accommodate some talented and/or high risk students who demonstrate the potential to make satisfactory progress at the University. A special request (petition letter) should be addressed to the Committee on Admissions. If admitted, the probationary student must complete a normal course load (minimum of 12 semester hours in the summer or during a regular semester) and earn a 2.0 grade point average on a 4.0 grading scale. Failure to meet these requirements will result in academic dismissal.

Early Admission • A superior secondary school student may be admitted to the freshman class as an EARLY ADMISSION at the end of the third year in high school if (a) at least 15 acceptable secondary units (3 of which are in English, 2 in mathematics, and 2 in social sciences) have been earned and (b) if a standard score on the ACT or SAT has been earned that places the high school student in the top 30 percent of all high school seniors in the country. The minimum scores for this purpose are an ACT composite of 24 or an SAT total score of 1000. An applicant seeking Early Admission will also be required to submit a letter of recommendation from the principal which will include a statement that the applicant has completed at least 15 units toward graduation from high school.

ADMISSION WITH ADVANCED STANDING

Advanced Placement Program • Advanced placement and 3 semester hours of credit are awarded in American history, art, biology, calculus[4] chemistry,[5] classics, com-

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[4] Three semester hours will be awarded for math-calculus AB, and six hours will be awarded for math-calculus BC.

[5] Chemistry 105 only.

puter science, English,[6] European history, French, German, mathematics, music, physics, and Spanish to students who participate in the College Entrance Examination Board (CEEB) Advanced Placement Program offered through their high schools and who earn scores of three or higher on the final examinations.

College Level Examination Program • Placement and credit are awarded for College Level Examination Program (CLEP) General and Subject Examinations as described below.

CLEP GENERAL EXAMINATIONS. Credit is granted by the University for CLEP General Examinations in English composition, history-social sciences, natural sciences and humanities. A minimum score requirement for English is 600; an additional requirement is an essay approved by the English Department.[7] The minimum score requirement is 500 on each of the other sections. Each carries 6 hours credit. Use of these in a University degree program is subject to approval of the academic dean and department chairman concerned.

CLEP SUBJECT EXAMINATIONS. The University grants credit for CLEP subject examinations in accountancy, chemistry,[8] computer science (general business),

[6] Any student receiving a 3 or 4 on the examination will receive 3 hours of credit; any student receiving a 5 on the examination will receive 6 hours of credit for English 101 and 102.

[7] The English Deparment will grant 3 hours credit through CLEP regardless of the test date. Students desiring to obtain English credit through CLEP should contact the Counseling Center prior to taking the examination.

[8] The candidate for placement and credit must also submit a passing score on the American Chemical Society Test administered by the University's Department of Chemistry. Credit for Chemistry 115 and 116 may not be earned through advanced standing examinations.

economics, English composition, French, German, history, management, marketing, mathematics, political science, sociology, Spanish, and biology to students who earn scores of at least 50. To obtain credit in English composition, the student must write an acceptable essay on a test administered and graded by the Department of English at The University of Mississippi.[9] Credit in a specific degree program at the University for any of these is subject to the approval of the dean and department chairman concerned, prior to taking the examination.

GRADES FOR CLEP CREDIT. A grade of Z is recorded for credit granted by CLEP examinations.[10]

Other Credit-by-Examination Policies • A student must earn 12 hours at The University of Mississippi before credit-by-examination may be recorded on the student's transcript. The total number of hours one may earn in any of the credit-by-examination programs is 63. AFTER EARNING 24 HOURS OF COLLEGE CREDIT, A STUDENT IS NO LONGER ELIGIBLE TO EARN CREDIT BY MEANS OF CLEP GENERAL EXAMINATIONS, EXCEPT FOR MATHEMATICS CREDIT.

Credit for Educational Experiences in the Armed Forces • Credit toward a bachelor's degree may be granted to those applicants who enroll on the campus (or in one of the residence centers) upon submission to the Office of Admissions and Records a certified copy of either D.D. Form 295 or D.D. Form 214 which indicates a period of continuous active duty for at least 90 days. Four semester hours will be granted for basic training or its equivalent,

[9] Students desiring to obtain English credit through CLEP should contact the Counseling Center prior to taking the examination.

[10] For explanation of the Z grade see page 79.

and it will be considered as credit in one of the University ROTC programs or as elective or physical education credit. Upon successful completion of 18 months participation with the Army National Guard/Active Army Reserve, an additional 6 hours will be awarded in the Army ROTC program. An additional 12 semester hours of credit in one of the ROTC programs will be granted to students who earned a commission while in service. Additional credit for training in formal service schools will be granted on the basis of recommendations published in A GUIDE TO THE EVALUATION OF EDUCATIONAL EXPERIENCES IN THE ARMED SERVICES or the recommendations of the Commission on Accreditation of Service Experiences insofar as the recommended credit can be evaluated as equivalent to a specific University course. The maximum credit allowed from these sources is 40 semester hours. Credit is also granted for correspondence courses completed through a United States Armed Forces Institute program up to the maximum of 33 semester hours for all credit from correspondence and extension sources. Credit is not granted for correspondence courses administered by the armed services.

ADMISSION OF TRANSFER STUDENTS

An applicant seeking to transfer to the University from a regionally accredited institution of higher learning may be admitted in good standing providing the following requirements are met:

(a) The applicant submits an official transcript from each institution of higher learning previously attended.

(b) The applicant has a cumulative grade point average of at least 2.0 on a 4.0 scale.

(c) The applicant is eligible to return to the institution of higher learning from which transfer is sought.

NOTE: A transfer applicant who has not met the following course requirements:

6 semester hours of English Composition
3 semester hours of College Algebra or above
6 semester hours of Laboratory Science
9 semester hours of Transferrable Electives

must show proof of an American College test composite score of 15 or Scholastic Aptitude Test combined score of 720. Official score reports from the testing services or scores recorded on official high school or college transcripts are acceptable.

Evaluation of Credits • The University will provide each approved transfer applicant with an evaluation of previously earned credits. The dean of the college or school to which the applicant is admitted determines the way previously earned credits will

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UNITED STATES' EXHIBIT 836

FACILITIES REPORT

STATE OF MISSISSIPPI
INSTITUTIONS OF HIGHER LEARNING

CIVIL ACTION #GC 75-9-K

AYERS AND UNITED STATES OF AMERICA

v.

ALLAIN, ET AL.

Prepared by:
Harvey H. Kaiser
March, 1987

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1. INTRODUCTION

In the Ayers v. Allain case, the United States contends that the defendants in the State of Mississippi, since 1953, "have maintained and perpetuated the dual system of higher education based upon race".[1] The issues are further defined in a Preliminary Pre-Trial Statement filed with U.S. District Court (N.D.Miss) on 1 December 1980:

> Whether the defendants have deprived black students in Mississippi of equal educational opportunity in public institutions of higher education by discriminating against traditionally black public universities in the assignments of institutional missions and scope, the placement of academic programs, the construction and maintenance of physical facilities and the allocation of state appropriations.[2]

This report analyzes the physical facilities aspects of the case.

The physical facilities of the eight higher education campuses administered by the Board of Trustees of State Institutions of Higher Learning (IHL) represent buildings constructed over the past 150 years (Figure !). Determining whether the defendants have maintained a racially dual system of higher education with respect to physical facilities requires consideration of the origins of the campuses and their development over more recent times. Because of the uniqueness of this type of investigation, analyses must proceed on an exploratory basis: first, by gathering data and gaining familiarization with the campuses; second, by understanding the relationships between campuses in the

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[1] Civil Action #75-9-K, filed in the U.S. District Court (N.D.Miss), p. 10.

[2] Preliminary Pre-Trial Statement of the United States, Ayers v. Winter, Civil Action #GC-75-9-K, December 1, 1980. para 3.7, p. 10.

System regarding missions, academic programs, and System policies concerning institutional developments; and third, examining the conditions of the individual institutions during their major period of expansion in the post World War II period which have created their present character.

The character of an institution can be generally described by its mission, traditions, and academic programs. Routes of access, topography, architectural styles of buildings, types and characteristics of facilities, and relationships of open space and buildings help to define campus character. Physical characteristics of a campus also contribute to images that are part of the subjective impression of a campus. General terms of "research university", "liberal arts college", "technical institution", "rural residential", or "urban" also describe campus character. In the state of Mississippi, traditional racial identification is also a description of campus character. The current character of each of the eight IHL campuses results from a variety of historical decisions. Agencies of the state responsible for resource allocation, the System governing board, and campus administrators all played important roles in campus development. Over time, their initiatives and decisions shape the campuses as viewed today. Until 1953, the State of Mississippi maintained a dual system of higher education through statutory legislation. The inequitable treatment of the traditionally black institutions has been reported in various documents evaluating the State's system of higher education. For the past thirty years, resource allocation for land acquisition, facilities, and equipment had the potential for eliminating the characteristics of a racially dual system.

Because facilities are an important component of the character of a campus, they provide a significant measure of efforts taken to alter a campus character. As missions

FIGURE 1

IHL CAMPUS LOCATIONS

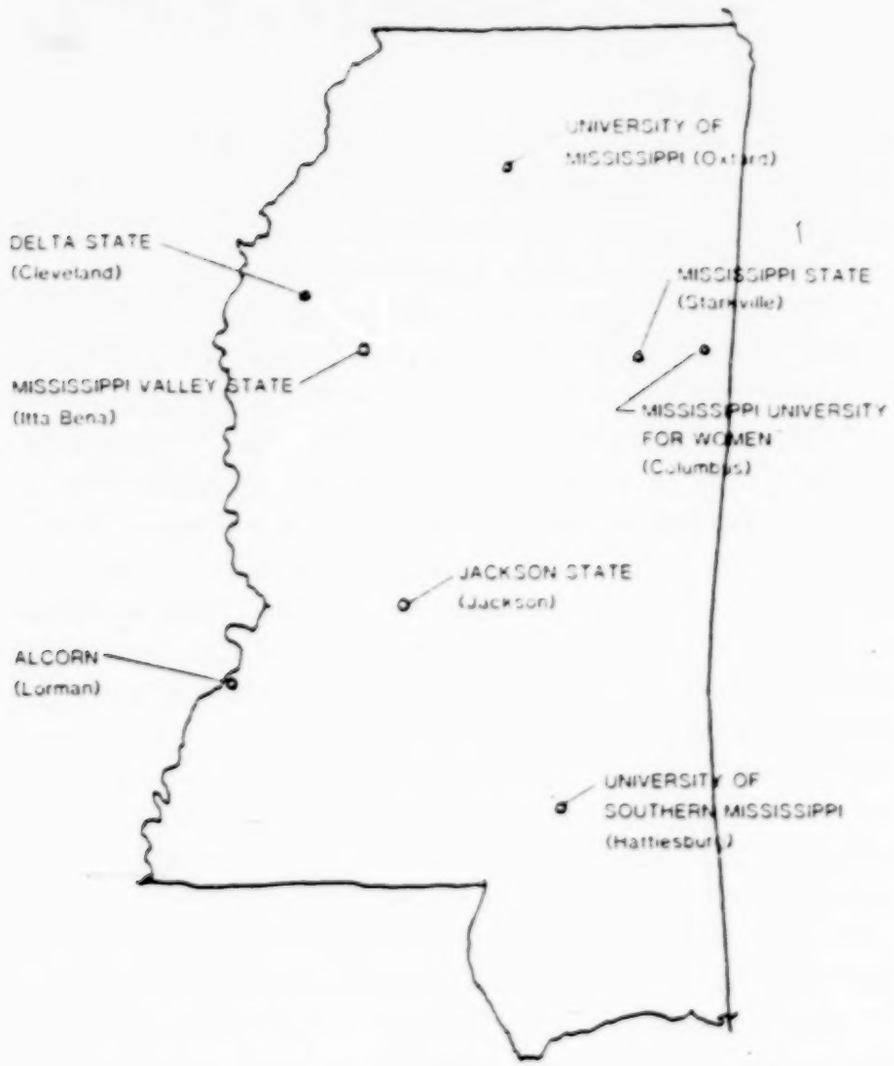


Figure 1.
IHL Campus Locations

are modified and programs expanded or new ones introduced, resource allocation decisions follow. Indeed, funds expended for buildings and grounds may be the most tangible measure of the determination to change a campus' character. A comparison of the resource allocations for facilities provide insights into policies and actions taken to modify the conditions at each campus.

The central question of the research and analyses conducted for this report is whether the allocation of resources for facilities—funds for capital expenditures, plant additions, and major repairs and renovations—during the past thirty years contributed to elimination of vestiges of a racially dual system in place in 1953. That year was selected for beginning the analyses of campus changes undergoing a period of dramatic expansion. A coincidence was the preparation of a comprehensive report (the Brewton Report) with useful data on facilities in 1953/54.

The evaluation of a higher education system for vestiges of a dually racial system is unique. Normative criteria must be applied judiciously in seeking whether actions taken in allocating resources for facilities were effective in achieving the goal of eliminating vestiges of a dual system. In this regard, viewing a campus and comparing it to other components of a system this year, or at any single year, does not provide an adequate basis of evaluation. Each year folds into the next with changes occurring in academic programs and facilities needs. Closely interwoven with these changes are the State of Mississippi's obligations to eliminate the vestiges of a dual system of higher education.

Planning an existing campus for program and enrollment expansion or the creation of a new campus can be based on normative criteria for space allocated to specific activities similar to the planning of a new building or a

renovation. Definitions of space per student or by a specific functional activity enable the planner to project future needs. The same kinds of criteria are also applied to comparing existing facilities for adequacy and evaluating capital budget needs. Published guidelines for space per full-time equivalent (FTE) student and specific space uses are available from a variety of sources, including the 1974 NCES *Inventory of Physical Facilities in Institutions of Higher Education*. The sources provide useful normative criteria, e.g., overall campus space (GSF and NASF) per FTE and space by HEGIS category of space use. However, in the analysis of Mississippi IHL campuses, we are examining changes over time for a system and comparisons between campuses.

Expenditures for the addition of space or improving existing facility conditions are a single event in the evolving character of an institution. One year's activity may be significant but can obscure the failure to respond to other opportunities to add academic programs or expand existing ones. The documented relative position of the TBI's compared to the TWI's in 1953 establishes the difference in the character of the institutions. Missions were limited, graduate and research activities were absent from the TBI's. The fundamental question is whether the State of Mississippi compensated for these differences from a facilities perspective. The implication is that a study of actions taken over time is necessary rather than a "snapshot" view of current campus conditions compared to other campuses in a system.

By collecting data over the thirty year study period, a series of questions can be framed. For example, at the conclusion of the 1954 Brewton Study[3], did the State of Mis-

[3] John R. Brewton. Higher Education in Mississippi, Digest of the Survey Report, Board of Institutions of Higher Learning, 1954.

sissippi move affirmatively to eliminate the differences in character between traditionally black and traditionally white institutions? Did the State of Mississippi compensate for the differences in each biannual capital appropriation, accumulating into thirty years of resource allocation by building facilities for academic programs and support services at the traditionally black institutions (TBI's)? Was the level of compensation adequate to change the character of the TBI campuses?

The central theme of this report then becomes not one of comparability of recent resource allocation practices and current facilities but whether policies of the state maintained or eliminated the dual system existing in 1953. It is worth noting that current procedures and practices for capital funding could imply equitable treatment of all IHL campuses. Furthermore, the possibility of no discernible differences in amount of space or plant value per FTE today could suggest that a dual system is no longer being maintained. From a research point of view, the examination of whether vestiges of a dual system exist or whether a dual system is being maintained goes beyond current practices and conditions.

A basic research proposition can be framed as follows: if at the beginning of Mississippi's major expansion in higher education the institutions were different in character or historically had received dissimilar treatment in resource allocation for facilities, then special treatment would have been necessary to change the character of the TBI's. The scope and method of investigation has been designed to determine whether the practices and results of resource allocation for facilities during the past thirty years compensated for conditions existing prior to the statutory changes eliminating a dual system.

2. SCOPE AND METHOD OF INVESTIGATION

The scope and method of investigation for this report was shaped by the central issue of whether a dual system was maintained or eliminated by resource allocation for facilities. In 1980/81 and 1986/87 an extensive review was made of available documents along with visits to each campus. Interviews were held with campus administrators and staff, and with staff of the IHL to gain additional information.

An initial review of documents showed that there were limitations in the availability and accuracy of data during the post World War II period of growth. This point has been reinforced by the 1979 report of Dober and Associates[4] on campus conditions ". . . the ability to make exact statements about facilities begins with serious limitations." Thorough efforts were undertaken to overcome these limitations by obtaining data and commentary for significant indicators of resource allocation from 1953/54 to 1984/85. An initial sorting of information suggested that data on campus space (reported as gross square feet or net assignable square feet) and plant investments in capital expenditures for plant additions and major repairs and renovations was available throughout the study period although not uniform and consistent. It was recognized that this was self-reported data and subject to some inaccuracies in amounts and designated time of occurrence. However, an overall picture began to emerge in which data errors could be acknowledged as not significantly affecting analyses.

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[4] Dober and Associates, Inc.: Physical Facilities and Conditions at Eight University Campus Operated by the Board of Trustees of Higher Learning, State of Mississippi. New York: Academy for Educational Development, 1979.

The primary sources of data selected for the study were statewide surveys of Mississippi higher education, institutional biannual financial reports and the Mississippi State Building Commission biannual Survey of State Owned Buildings. The statewide survey included the Gibson Study (1945)[5], the Brewton Report (1954)[6], Report of the Advisory Groups (1961)[7], and the Dober and Associates Studies (1979 and 1981)[8]. Although data was not reported in identical ways the reports provided useful information describing the physical development of IHL institutions.

The availability and consistency of data for capital resource allocation resulted in the primary measures for analysis for the period from 1953/54 to 1984/85: 1) full-time equivalent (FTE) enrollment; 2) amount of space; and 3) plant investment. This information was available for all campuses in biannual financial reports for plant investment and by year of construction in the State Building Commission surveys and the Dober and Associates studies. Unavailability of detailed data in the HEGIS format for functional uses of space and building condition reports prevented the use of traditional methodologies. As indicators of resource allocation, campus space and plant investment reflect the state's response to enrollment and academic program-driven opportunities to change the character of an institution. The research premise in using these indicators was to determine if the additions to space and capital expenditures were done in an affirmative

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[5] Joseph E. Gibson. *Mississippi Study of Higher Education*, 1945. Board of Institutions of Higher Learning, 1945.

[6] Brewton, op cit.

[7] *Public Education in Mississippi, Reports of Advisory Groups, Volume II*. Board of Institutions of Higher Learning, 1961.

[8] Dober and Associates, 1979. op cit. Dober and Associates. *Capital Improvements Study, 1981*.

fashion to compensate for the differences in the character of the TBI's compared to TWI's.

Campus space is reported in gross and net assignable square feet and was based on self-reported campus information, with cross checking where possible from several sources. Plant investment is derived from financial reports of book value added annually and compared to construction costs reported in State Building Commission reports. Building replacement values were calculated using cost indexes for Jackson, Mississippi and compared to State Building Commission surveys. To compare institutions, calculations using the number of full-time equivalent (FTE) students were made.

Analyses of data were based on accumulating information at five year intervals to avoid the occurrence of a one year aberration through a major addition of space or fluctuation in enrollments. This approach adjusted some of the effects of double-digit inflation of construction costs in the 1970's and recent down turns in enrollments on several campuses. Another influence on analyzing data was the difference in economies of scale on larger campuses, where space additions have a lesser effect on changing campus character than on smaller campuses. For example, on campuses with small enrollments, the space per FTE and plant replacement value per FTE would be expected to be higher than on larger campuses because of the uniqueness of each space type.

Data was accumulated for each campus and then grouped by categories of TBI's and TWI's (See Appendix A). Comparisons were then made for: 1) universities (Jackson State, Mississippi State, University of Mississippi, and University of Southern Mississippi); 2) proximate campuses in the Cleveland area (Delta State and Mississippi Valley State); 3) for the land grant institutions (Alcorn and Mississippi State).

The report first reviews enrollments at the eight IHL campuses from 1953/54 to 1984/85. This is followed by data on facilities which describes and analyzes campus space and plant investment. Material on the most recent five year period identifies changes in campus space and plant investments, along with current requests for capital improvements. A conclusion draws together the analyses of data and reports findings.

3. GROWTH AND CHANGE – ENROLLMENTS 1953/54 to 1984/85

Growth and change has been significant in the eight public institutions of higher education in the State of Mississippi from 1953/54 to 1984/85. Total FTE enrollment has grown from 9,500 students in 1954 to a peak of 45,000 students in 1977. The total physical plant has been increased to accommodate the enrollment growth, along with expanded academic programs.

A starting point in examining the patterns of growth and change between traditionally white institutions (TWI) and trad tionally black institutions (TBI) is the Brewton 1954 study. The study stated that: "[A]lthough the State has made noticeable strides during the past decade in the education of its Negro citizens on all levels, the goal of equality is still very distant."[9] The study further defined the differences in higher education equality: "[O]pportunities (in higher education) are limited to the three colleges (TBI) to undergraduate training in teacher education, in agriculture and the mechanical arts, and in the practical arts and trades; whereas the needs of the white population are served by five colleges, with offerings extending from a variety of undergraduate programs through extensive offerings on the graduate and professional levels."[10]

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[9] Brewton, op. cit. p. 146.

[10] Brewton, op. cit. p. 148.

The enrollment in 1954 was divided between 1510 students (16% of the total), in the TBI's and 7,985 students (84% of the total) in the TWI's. The Brewton Study[11] response to the inequalities were recommendations to increase the portion of black students in higher education and, simultaneously, improving and expanding academic programs with graduate education. These recommendations were to be introduced in a comprehensive manner. This implied both growth *and* a change in the character of the TBI's. Although the study specified missions for each of the three TBI's, it did not identify which would supply the proposed graduate program needs. In fact, it was suggested that if graduate expansion at Jackson State was unavoidable, then "immediate" cooperation with the University of Mississippi to develop the programs should be sought, with advanced degrees conferred by the University of Mississippi.

In 1954, study recommendations were made for enrollments and plant investments to meet projections for the next decade. By 1965, total enrollments were expected to reach 15,000 students; TBI's were to expand to 3,500 students and TWI's to 11,500 students. To meet the needs of expanded enrollment and programs, projections were made for new buildings and remodeling and renovation of existing buildings and grounds. Table 1 summarizes these projections and allocations of funds to accommodate changes.

[11] Brewton, op. cit. p. 160.

TABLE 1

Mississippi Public Institutions of Higher Learning
Enrollment: 1953/54 (Actual), 1965 (Projected)
Expenditures: 1953/54-1965 Projected

INSTITUTION	Enrollment 1953/54 (Actual)	Enrollment 1965 (Projected)	Enrollment Difference	Total Expenditures 1953/54-1965 (Projected)	Expenditures/FTE 1953/54-1965 (Projected)
Alcorn	541	800	259	$ 500,000	$1,930
Miss. Valley	185	700	515	1,700,000	3,300
Jackson State	784	2,000	1,216	5,000,000	4,111
Total TBIs	1501	3,500	1,990	7,200,000	3,618
Delta State	423	600	177	2,000,000	11,299
Miss. State	2451	3,500	1,049	9,000,000	8,579
M. U. Women	820	900	80	2,600,000	32,500
U. Miss.	2197	3,000	803	9,000,000	11,208
U. So. Miss.	2094	3,500	1,406	7,600,000	5,405
Total TWIs	7985	11,500	3,515	30,200,000	$8,591
Total all IHL	9495	15,000	5,505	$37,400,000	$6,794

Source = Brewton Report, 1954, p. 256, Table 24; pp. 257-275.

The allocations per full-time equivalent (FTE) student for each institution are an indication of how the character of each institution would change to meet enrollment and academic growth. At Alcorn A & M, projected allocations (in 1955 dollars) range from less than $2,000 per FTE to $32,500 per FTE at Mississippi University for Women. Comparisons between the proposed average funding for growth of TBI's and TWI's show sharp disparities; More than twice the amount per FTE was designated for TWI's in comparison to the TBI's (8,592 to $3,618). Even though one would expect economies of scale for the larger institutions, that is, less funds per FTE for larger institutions than for smaller institutions, this was not the case.

The potential opportunities for Jackson State to accommodate graduate programs can be questioned by comparing its funding proposal to the three traditionally white universities. The average for Ole Miss, Mississippi State, and the University of Southern Mississippi was $8,400/FTE, compared to $4,111 for Jackson State. It can be concluded that this proposed level of funding would continue the character of Jackson State as an undergraduate institution and limit its ability to achieve university status.

A comparison between the two undergraduate institutions serving the Cleveland area, Delta State and Mississippi Valley State, show disparities between TBI's and TWI's expenditures and funds for facilities per FTE. To accommodate an additional 515 students, reaching a total of 700 by 1965, Mississippi Valley State had less funds recommended per FTE than Delta State. The latter was to increase by only 177 students for a total of 600 students. The funds per FTE for Delta State was over three times the amount allocated for Mississippi Valley State.

Disparities also existed for the state's land grant institutions: Alcorn and Mississippi State. Alcorn's projected

enrollment increase was 32 percent (541 to 800) and Mississippi State's 30 percent (2,451 to 3,500). However, the projected capital funds per FTE were at $1,930 for Alcorn and $8,579 for Mississippi State.

By the time the Advisory Study Groups had completed their work in 1961, enrollment growth had exceeded the 1965 projections. Of the total 18,000 students, the share at TBI's had increased, but not as high as projected. The patterns of change shown in Table 2 indicate that although enrollment increased significantly at the TBI's, their character did not change. Alcorn and Mississippi Valley were still undergraduate institutions and Jackson State offered only a limited number of graduate programs at the Master's level.

TABLE 2
ENROLLMENTS

1953/54, 1960/61, 1964/65, 1969/70, 1974/75, 1979/80, 1984/85

	1953/54	1960/61	% Inc	1964/65	% Inc	1969/70	% Inc	1974/75	% Inc	1979/80	% Inc	1984/85	% Inc
TBI's													
Alcorn State	541	890	64.5%	1,407	58.1%	2,385	69.5%	2,335	- 12.1%	1,942	- 16.8%	2,199	13.2%
Jackson State	1,048	1,422	35.7%	1,930	35.7%	4,249	120.2%	5,405	27.2%	6,639	22.8%	5,564	- 16.2%
Mississippi Valley State	185	939	407.6%	1,594	69.8%	2,310	44.9%	2,659	15.1%	2,609	- 1.9%	2,280	- 12.6%
Subtotal TBI's	1,774	3,251		4,931		8,944		10,399		11,190		10,043	
TWI'S													
Delta State	423	919	117.3%	1,487	61.8%	2,441	64.2%	2,659	8.9%	2,580	- 13.0%	3,473	34.6%
Mississippi State	2,451	4,285	74.8%	5,915	38.0%	8,000	35.2%	9,657	20.7%	10,530	9.0%	10,685	1.5%
Mississippi Univ Women	820	1,473	79.6%	2,397	62.7%	2,436	1.6%	2,375	- 2.5%	1,973	- 16.9%	1,573	- 20.3%
Univ. of Mississippi	2,197	3,994	81.8%	4,554	14.0%	6,353	39.5%	7,247	14.1%	8,406	16.0%	7,504	- 10.7%
Univ. So. Mississippi	2,289	3,996	74.6%	5,398	35.1%	7,072	31.0%	8,438	19.3%	8,961	6.2%	10,686	19.3%
Subtotal TWI's	8,180	14,667		19,751		26,302		30,376		32,450		33,921	
TOTAL	9,954	17,918		24,682		35,246		40,775		43,640		43,964	

ENROLLMENTS: 1964/65 to 1984/85

By 1965 enrollments in the eight institutions were almost 10,000 more students than had been projected by the 1954 Brewton Study. Despite enrollments growths and major expenditures by the state in higher education, disparities between the TBI's and TWI's continued to exist. While the eight campus enrollments grew to almost 25,000 students, an increase of almost 15,000 from 1983/84, the share of total enrollment at TBI's only increased from 18% in 1953/54 to 22% in 1984/85. On a program basis, the TBI's offered fewer undergraduate programs than the TWI's; at the graduate level the TBI's offered 3 programs compared to 182 at the TWI's. No TBI's offered the doctorate degree.

From 1964/65 to 1984/85, statewide FTE enrollment at the eight main campuses nearly doubled to a peak of approximately 45,000 students. The statewide pattern followed national trends with the momentum of the post World War II baby boom, increases in traditional college age attendance rates expanding into the late 1970's and levelling off in the 1980's. Patterns of enrollment growth varied on each of the campuses with peaks reached as early as 1967/68 (MUW) and as recently as 1983/84 (DS, MSU and USM) (Table 3). Rapid growth continued on all campuses through 1969/70 and declines began in the mid and late 1970's. The TBI's have all fallen below their peak levels and lost their share of statewide enrollments in recent years which steadily grew from 18% in 1953/54 to 25% in the 1970's and declined to 22% in 1984/85.

TABLE 3

ENROLLMENTS: PEAKS AND 1984/85

	Peak Enrollment		*1984/85*
TBI's			
Alcorn State	(75/76)	2,790	2,199
Jackson State	(77/78)	6,875	5,205
Mississippi Valley State	(76/77)	3,072	2,280
TWI's			
Delta State	(83/84)	3,769	3,473
Mississippi State	(83/84)	11,256	10,685
Mississippi Univ. Women	(68/69)	2,601	1,573
U. of Mississippi	(78/79)	8,523	7,505
U. of S. Mississippi	(83/84)	10,778	10,686

The following are detailed descriptions of enrollments at each campus.

Alcorn State: Enrollments (FTE) grew from 541 in 1953/54 to over 1,400 in 1964/65. Growth increased to average around 2,400 in the mid 1970's with a peak of 2,790 in 1975/76. In the past five years enrollment has averaged around 2,100 undergraduate and 100 graduate students with 96% black.

Delta State: Delta State rapidly grew from 423 students in 1953/54 to almost 1,500 in 1964/65. Growth continued into the mid 1970's with combined undergraduate and graduate enrollments averaging 2,500 to 2,800 students. After a level period enrollment again increased to a peak of 3,769 in 1983/84 and declined by about 10% in the past two years to average around 3,000 undergraduate and 300 graduate students with 83% white.

Jackson State: Jackson State's enrollment in 1953/54 of 1,048 students steadily increased to a peak of 6,875 in 1977/78. A growth in graduate enrollments to over 600 contributed to this peak. Undergraduate enrollment has steadily declined in recent years to a low of 4,650 students and averaging 5,100, while graduate students have averaged over 500 per year. The black undergraduate enrollment has averaged around 95% and graduate at 85%.

Mississippi State: Mississippi State has seen a constant growth from a 1953/54 enrollment of 2,451 to a peak of 11,256 in 1983/84. Enrollment has been relatively constant the past two years with approximately 9,700 undergraduate and 1,100 graduate students. The racial profile was 89% white undergraduate and 92% white graduate.

Mississippi University for Women (MUW): Enrollments grew at MUW from 820 in 1953/54 to a peak of 2,601 in 1968/69. The total for undergraduate and graduate students averaged 2,300 to 2,500 for a decade and then began a decline to 1,539 students in 1984/85. Decreases can be attributed to a drop in graduate enrollment from a peak of 268 in 1975/76 to 16 in 1984/85 and by changing attitudes towards the predominantly single-sex college. Intensive recruiting has recently reversed a trend which reached a low of enrollments of 1,478 in 1981/82.

Mississippi Valley State: In 1953/54 Mississippi Valley State was a relatively new campus of 185 students. Extensive additions of facilities accommodated an increased enrollment to an average of 2,400 through the 1970's and a peak of 3,072 in 1976/77. Enrollments, primarily of undergraduate students, has declined to 2,280 in 1984/85. Graduate enrollment has ranged from 25 to 50 students in recent years. The student body is over 99% black.

University of Mississippi: From a total enrollment of 2,197 in 1953/54, the undergraduate and graduate enrollments steadily increased to a peak of 8,523 in 1979/80.

Modest declines brought the enrollment down to 7,505 in 1984/85. The campus has averaged 7,800 during the past ten years with 7,000 undergraduates and 800 graduate students. Approximately 90% of the undergraduate and 80% of the graduate students are white.

University of Southern Mississippi: The University of Southern Mississippi's enrollments grew steadily from 2,289 in 1953/54 to a peak of 10,778 in 1983/84. The 1984/85 enrollment of 10,686 was divided between 9,313 undergraduates and 1,373 graduate students, approximately 80% undergraduate and 85% graduate are white students.

ENROLLMENT COMPARISONS

Universities: In 1953/54, Jackson State's enrollment was less than half of any of the three TWI's; in 1984/85 Jackson State's enrollment was less then half of Mississippi State and USM and two-thirds of Ole Miss (Table 4). This pattern is similar to any of the peak year enrollments on the four campuses. During the past five years, Jackson State averaged around 5,100 undergraduate and 500 graduate students, ranging from a third to a half the TWI's (Table 5).

Delta State and Mississippi State: Delta State and Mississippi Valley State (MVS) enrollments paralleled each other at the undergraduate level from 1960/61 to 1979/80. MVS reached a peak of 3,014 in 1976/77 and Delta State's peak was 2,954 in 1983/84. However, Delta State's graduate enrollment averaging over 300 in the past decade and a steady undergraduate enrollment of around 3,000 contrast to MVS's declining enrollment of approximately 2,300 during the past five years.

Land Grant Campuses: Enrollments at Alcorn State and Mississippi State, the State of Mississippi's two land grant

TABLE 4
ENROLLMENTS – RESEARCH UNIVERSITIES

	1953 54	1960 61	% Inc.	1964 65	% Inc.	1969 70	% Inc.	1974 75	% Inc.	1979 80	% Inc.	1984 85	% Inc.
Jackson State	1,048	1,422	35.7%	1,930	35.7%	4,249	120.2%	5,405	27.2%	6,639	22.8%	5,564	– 16.2%
TWI'S													
Mississippi State	2,451	4,285	74.8%	5,915	38.0%	8,000	35.2%	9,657	20.7%	10,530	9.0%	10,685	1.5%
Univ. of Mississippi	2,197	3,944	81.8%	4,554	14.0%	6,353	39.5%	7,247	14.1%	8,406	16.0%	7,504	– 10.7%
Univ. So. Mississippi	2,289	3,996	74.6%	5,398	35.1%	7,072	31.0%	8,438	19.3%	8,961	6.2%	10,686	19.3%
Total TWI's	6,937	12,225		15,867		21,425		25,342		27,897		28,875	
	7,985	13,697		17,797		25,674		30,747		34,536		34,439	

TABLE 5

ENROLLMENTS: RESEARCH UNIVERSITY AVERAGE 1980/81 to 1984/85

	Undergrad	Grad	Total
Jackson State	5137	547	5684
TWI'S			
Mississippi State	9657	1143	10,800
Univ. of Mississippi	7352	724	7,521
Univ. So. Mississippi	8918	1302	10,220

campuses, show significant differences. Over the thirty-year period from 1953/54 to 1984/85, Alcorn's total enrollment has remained about 20% of Mississippi State's. During the past five years, Alcorn's undergraduate and graduate enrollments averaged 2,100 and 100 respectively, compared to 9,700 undergraduates and 1,100 graduate students at Mississippi State.

4. FACILITIES

Enrollment growth from approximately 10,000 students in 1953/54 to a peak of 45,000 students in the 1980's was accompanied by a substantial increase in campus space and plant investment. The momentum of building responding to enrollment growth began in the early 1960's and additions to campus space are still underway, although at a much reduced pace in the past few years.

Analyses of Mississippi's policies for allocating resources to each campus is based on: 1) the quantity of space in gross square feet (GSF) and net assignable square feet (NASF); and 2) plant investment. Additions to campus space and the accompanying plant investments are generally in response to enrollment growth, expanded or

new academic programs, and replacement of deteriorated or functionally obsolete facilities. Occasionally, the approval of funding anticipates program and space requirements. More typically, however, the availability of a facility will follow a need by several years. The time for delivery of a facility from initial campus identification of a need to occupancy can take 3 to 5 years under high priorities. Backlogs in statewide priorities and available resources can extend this period 10 years or longer.

The amount of space and plant investment for a campus is an indication of the State of Mississippi's higher education policies and priorities. Overall quantities of space and assignable area changing over time are an historic record of a campus' growth. In comparison to other campuses, they become important indicators of the level of programs and attractiveness to a diverse student population and faculty.

Analyses of campus space and plant investments for an individual campus or comparisons to other campuses in a period of growth is evaluated over time rather than in any individual year. This approach avoids the unique event of a major addition to plant by one or more buildings or a short term drastic fluctuation in enrollment. During the years 1960/61 to 1984/85, space on the eight campuses in Mississippi expanded from 6.5 million (GSF) to 18.2 million (GSF) and replacement value (in constant dollars) increased from around $200 million to over $920 million. Although enrollment was growing, system wide fluctuations occurred as some campuses reached peak years in the early 1970's, followed by sharp declines and recent stability. Other campuses saw continuous growth until levelling off in the past few years.

Several sources were used to gain a composite picture of campus facilities over a twenty-five year period, including

individual campus biannual reports, reports prepared by the Board of Trustees, Institutions of Higher Learning (IHL) and the Mississippi State Building Commission. Also of importance were studies prepared for the IHL by Dober and Associates, Inc.: *Physical Facilities and Conditions at Eight University Campuses* (1979), and *Capital Improvements Study* (1981). Site visits were also made to the campuses in 1981 and 1986/87 to evaluate the accuracy of the reports and familiarization with the settings and general building conditions.

CAMPUS SPACE

The total increases in campus gross space (GSF) from 1960/61 to 1984/85 ranges from 682,000 (GSF) at Delta State to almost 3.3 million GSF at Mississippi State (Table 6). In the early years of growth several campus doubled in size in only five years (Alcorn, Jackson State, and U. So. Mississippi). In the past five years additions to plant ranged from 0% to 5%, except for Jackson State (21.5%). The largest institutions in 1960/61, the three TWI research universities, show a proportionally smaller increase over 25 years which can be attributed to the availability of general purpose facilities: libraries, athletic and physical education space, student unions, etc. However, growth of almost 2 million GSF each at Ole Miss and USM, and over 3 million GSF at Mississippi State, represent significant increases.

Gross campus space is a useful indicator of plant investment as a measure of the allocation of resources to each campus. The distribtion of net assignable square feet (NASF), data available from 1969/70 to 1984/85 for the eight campuses, permits analyses of institutions' abilities to meet their mission and comparisons among institutions (Table 7). The ratio between NASF and GSF is in the

CAMPUS SPACE
(Gross Square Feet)

	1960/61	1964/65	% Inc	1969/70	% Inc	1974/75	% Inc	1979/80	% Inc	1984/85	% Inc	Increase 1960/61-1984/85
IHLS												
Alcorn State	244,991	509,576	108.0%	818,378	60.6%	1,001,385	22.4%	1,235,159	23.3%	1,234,611	0.0%	989,620
Jackson State	262,022	582,969	122.5%	859,242	47.4%	999,664	16.3%	1,129,882	13.0%	1,372,587	21.5%	1,110,565
Miss Valley State	109,483	582,359	88.2%	773,558	32.8%	1,139,942	47.4%	1,296,244	13.7%	1,324,007	2.1%	1,014,524
Subtotal IHLS	816,496	1,674,904		2,451,178		3,140,991		3,661,285		3,931,205		3,114,709
TWIS												
Delta State	408,369	571,059	39.8%	693,872	21.5%	852,968	22.9%	1,132,725	32.8%	1,080,575	3.7%	682,206
Mississippi State	1,729,176	2,964,093	71.4%	3,722,961	25.6%	3,940,355	5.8%	4,788,851	21.5%	5,017,758	4.8%	3,288,582
Miss Univ Women	687,121	1,068,318	55.5%	1,329,811	24.5%	1,387,931	4.4%	1,544,132	11.3%	1,544,159	0.0%	857,038
Univ of Miss	1,808,774	2,305,025	27.7%	2,638,584	14.5%	2,840,161	7.6%	3,573,981	25.8%	3,741,360	4.7%	1,932,586
Univ So Miss	962,953	2,102,083	118.3%	1,991,300	-5.3%	2,122,591	6.6%	2,822,252	33.0%	2,849,091	1.0%	1,886,138
Subtotal TWIS	5,593,353	9,010,578		10,376,528		11,144,006		13,861,941		14,242,943		8,649,590
TOTAL	6,409,849	10,685,482		12,827,706		14,284,997		17,523,226		18,174,148		11,764,299

CAMPUS SPACE
(Net Assignable Square Feet)

	1960-70	1974-75	% Inc.	1979-80	% Inc.	1984-85
THIS						
Alcorn State	585,729	878,408	50.0%	1,063,087	21.0%	1,011,925
Jackson State	963,492	746,787	12.5%	960,874	28.7%	1,110,457
Miss. Valley State	584,214	777,687	33.1%	912,318	17.3%	923,212
Subtotal THIS	1,733,435	2,402,882		2,936,279		3,045,594
TWIS						
Delta State	610,607	683,399	11.9%	900,383	31.6%	817,215
Mississippi State	2,418,298	2,946,140	9.4%	2,777,780	5.0%	3,108,942
Miss. Univ. Women	900,225	941,805	4.6%	1,045,273	11.0%	1,045,273
Univ. of Miss.	1,793,371	1,940,794	8.2%	2,262,304	16.6%	2,261,786
Univ. So. Miss.	1,336,658	1,489,338	11.4%	1,778,132	19.4%	1,708,429
Subtotal TWIS	7,059,159	7,701,476		8,763,872		9,029,625
TOTAL	8,792,594	10,104,358		11,700,151		12,075,219

range of 50% to 70% depending upon efficiency of building design in gaining the maximum usable space for assignable purposes.

As enrollment patterns changed over the past 25 years, so did the space per capita. Measured as GSF per FTE or NASF per FTE, this indicator is usually used in planning requirements for new construction and renovations. It also serves to analyze variations between institutions. Dober[14] notes that these distributions "probably reflects historic circumstances, including differences among the institutions in age, program offerings, organizational structure, faculty and staff ratios, fluctuations in undergraduate and graduate enrollments, geographic location, and State and Federal funding patterns." In making comparisons between institutions, the difference in missions for teaching, research, and community service will also have some impact on per capita space figures.

Several observations can be made from the per capita space data (Table 8).

- Mississippi University for Women has consistently had the highest GSF and NASF per student.
- Enrollment declines in recent years at Alcorn and MVS rank them the second and third highest space per capita after low rankings of space per capita in 1960/61.
- Ole Miss has shifted from a high space per capita to a middle position among the eight campuses in recent years.
- Delta State has remained in the middle of space per capita rankings until recent years' enrollment increases and an increasing backlog of facility needs.

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[14] Dober & Associates, Inc. *Capital Improvements Study – 1981*. p. 3-7.

- Mississippi State experienced high space per capita throughout the 25 year period of campus growth.
- USM has retained the lowest GSF and NASF per capita of any of the TWI research universities as it has reached the position of the largest enrollment in the state.
- Jackson State's space per capita has been the lowest of all the state's campuses during the 25 year period.

Analyses of space per capita requires an overview of patterns during the period 1960/61 to 1984/85 to understand the relationships between enrollment changes and plant additions and avoid distortions at a single year's relative position. However, campus space in 1980/81 is representative of enrollment relative to space for a mature system of eight campuses as a measure of the state's allocation of resources for facilities. The Dober & Associates study based on 1980/81 data provides comparisons of space per capita when enrollments were at or near peaks and only a relatively small proportion of space was later added to the campuses (Table 8a).

TABLE 8

GROSS SPACE PER FULL-TIME EQUIVALENT

	1960/61	1964/65	1969/70	1974/75	1979/80	1984/85
TBI'S						
Alcorn State	275.27	362.17	343.14	428.86	636.02	561.44
Jackson State	184.26	302.06	202.22	184.95	170.19	246.69
Mississippi Valley State	329.59	365.34	334.87	428.71	496.84	580.70
TBI Average GSF/FTE	263.04	343.19	293.41	347.51	434.35	462.95
TWI'S						
Delta State	444.36	384.03	284.26	320.79	439.04	314.02
Mississippi State	403.54	501.11	465.37	408.03	454.78	469.61
Mississippi Univ Women	466.48	445.69	545.90	584.39	782.63	981.66
Univ. of Mississippi	452.11	506.15	415.33	391.91	425.17	498.58
Univ. So. Mississippi	240.98	389.42	281.58	251.55	314.95	266.62
TWI Average GSF/FTE	401.49	445.28	398.49	391.33	483.31	506.10

TABLE 8A

GROSS SQUARE FEET PER FULLTIME EQUIVALENT STUDENT, FALL 1980
NET ASSIGNABLE SQUARE FEET PER FULLTIME EQUIVALENT STUDENT, FALL 1980
NET ASSIGNABLE SQUARE FEET PER HEGIS CATEGORY PER FULLTIME EQUIVALENT STUDENT, 1980

	Eight Campuses	Alcorn State	Delta State	Jackson* State	Miss.* State	Miss. Univ. for Women	Miss. Valley State	Univ.* of Miss.	Univ. of* So. Miss. + Gulf Park
GSF/FTE Fall 1980	369.1	491.6(3)	430.0(4)	202.7(8)	408.8(5)	850.7(1)	494.8(2)	354.7(6)	281.6(7)
NASF/FTE Fall 1980	253.2	418.5(2)	338.9(4)	135.4(8)	279.0(5)	567.6(1)	352.3(3)	233.9(6)	175.9(7)
NASF/FTE Fall 1980 Excluding Residential	180.9	256.5(2)	252.3(3)	101.1(8)	210.9(5)	441.4(1)	246.3(4)	155.1(6)	123.6(7)
NASF/FTE by Category									
100 Classroom	19.5	20.3	29.6	24.3	15.5	34.3	56.4	11.7	13.5
200 Lab.	34.4	43.4	28.1	7.8	55.1	66.4	34.0	27.3	22.7
300 Office	29.3	35.8	26.0	14.3	42.5	48.6	29.8	26.7	22.8

TABLE 8A – Continued

GROSS SQUARE FEET PER FULLTIME EQUIVALENT STUDENT, FALL 1980
NET ASSIGNABLE SQUARE FEET PER FULLTIME EQUIVALENT STUDENT, FALL 1980
NET ASSIGNABLE SQUARE FEET PER HEGIS CATEGORY PER FULLTIME EQUIVALENT STUDENT, 1980

	Eight Campuses	Alcorn State	Delta State	Jackson* State	Miss.* State	Miss. Univ. for Women	Miss. Valley State	Univ.* of Miss.	Univ. of* So. Miss. + Gulf Park
400 Study	12.4	22.0	13.4	10.6	8.6	20.6	10.0	14.7	12.1
500 Special	27.8	37.7	47.8	11.1	36.9	40.5	39.9	18.5	24.3
600 Gen'l	30.6	63.9	63.9	21.1	23.3	90.2	55.0	25.4	16.4
700 Supporting	16.1	31.3	20.0	1.4	19.0	26.5	17.4	20.4	11.3
800 Health Care	2.2	2.1	1.8	0.0	6.6	2.6	1.0	0.7	0.5
900 Residential	72.3	162.0	86.6	34.3	68.1	126.2	106.0	78.8	52.3
1000 Unclassified	8.6	0.0	21.7	0.5	3.4	111.7	2.8	9.7	0.0

* Doctorate and Post-Doctorate Institutions

Number in parentheses denotes ranking of the eight campuses.

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The 1980/81 ranking of NASF/FTE excluding residential space illustrates a wide range among IHL campuses (Table 9):

TABLE 9

Non-Residential Space – 1980/81

	NASF/FTE
Mississippi University for Women	441.4
Alcorn State	256.5
Delta State	253.3
Mississippi Valley	246.3
Mississippi State	210.9
University of Mississippi	155.1
University of So. Mississippi	123.6
Jackson State	101.1

Source: Dober & Associates, Inc. Capital Improvements Study, 1981. p. 3-8.

Space at the Mississippi University for Women taken out of service explains some of the high NASF per FTE, along with a significant decline from peak enrollments. Other distortions, such as the larger proportion of laboratory space at Mississippi State, is due in part to land grant related activities of agricultural research.

The Dober & Associate 1981 Study reports the following on residential space:

> "Residential space at the eight campuses in 1980/81 accounted for approximately one-fourth to one-third of all space. The number, sizes, and percentage of university operated student housing varies considerably from campus to campus (Table 10). About four-fifths of the students enrolled (Fall 1980) were housed in campus accommodations at Alcorn State and Mississippi campuses. The remaining campuses housed about one-half of their student enrollments. These

figures do not reflect the availability of non-university owned fraternity and sorority houses.

"In addition to dormitories, all institutions, to varying degrees, operate additional campus housing for faculty, and staff as well as for married students. The number ranges from 509 units at the University of Southern Mississippi (including its Gulf Park campus) to 40 units at Mississippi University for Women.

"Some campuses have taken large amounts of existing housing – in poor condition – out of the campus inventory and are using the space for storage or leaving the space vacant. (Mississippi University for Women, 126,332 NASF and University of Mississippi, 56,917 NASF).

CAMPUS SPACE COMPARISONS

Universities: Among the four universities, Jackson State ranked the lowest in GSF and NASF in 1960/61 and continues to have the smallest amount of campus space at the end of 25 years. Although the gap was closed between Jackson State and next university it is less than half the GSF at the University of Southern Mississippi. The USM campus is comparatively underbuilt for the current level of enrollments. Requested construction to satisfy campus needs at USM will further increase the difference between the TBI and the smallest of the TWI universities.

The cumulative difference of GSF built over 25 years is an increase of 1.1 million GSF added at Jackson State and a total 7.1 million GSF added at the three TWI universities. From 1969/70 to 1984/85 NASF at the TWI's increased three times that of Jackson State. By comparison, the total eight campus GSF in 1960/61 was around 6.4 million; a greater amount of GSF was built at the three TWI universities over 25 years than existed for all cam-

TABLE 10

STUDENT RESIDENTIAL FACILITIES NUMBER OF BUILDINGS
STUDENT RESIDENTIAL FACILITIES NASF
ORIGINAL DESIGN CAPACITY – BEDS
FALL 1980 ASSIGNMENT – BEDS
PERCENTAGE ASSIGNED BEDS TO TOTAL FTE ENROLLMENT 1981
NUMBER OF OTHER RESIDENTIAL UNITS/NASF FEET OTHER RESIDENTIAL UNITS

	Eight Campuses	Alcorn State	Delta State	Jackson State	Miss. State	Miss. Univ. for Women	Miss. Valley State	Univ. of Miss.	Univ. of So. Miss. + Gulf Park
Number of Student Residential Bldgs. Presently in Use (Fall 1980)	92	8	10	5	17	6	11	22	13
NASF	2,776,418	330,270	196,493	196,314	626,130	171,658	229,820	597,862	427,871
Original Design Capacity – Beds	21,255	2,158	1,507	1,474	4,865	1,190	1,928	4,572	3,561
Assigned Beds – Fall 1980	20,697	1,900	1,361	2,145*	4,703	905	1,946	4,107	3,630
Percentage Assigned Beds to Design Capacity	97%	88%	90%	146%	97%	76%	101%	90%	102%
Percentage Assigned Beds to Total FTE Enrollment Fall 1980	47%	86%	53%	36%	45%	51%	80%	46%	39%

TABLE 10 – Continued

STUDENT RESIDENTIAL FACILITIES NUMBER OF BUILDINGS
STUDENT RESIDENTIAL FACILITIES NASF
ORIGINAL DESIGN CAPACITY – BEDS
FALL 1980 ASSIGNMENT – BEDS
PERCENTAGE ASSIGNED BEDS TO TOTAL FTE ENROLLMENT 1981
NUMBER OF OTHER RESIDENTIAL UNITS/NASF FEET OTHER RESIDENTIAL UNITS

	Eight Campuses	Alcorn State	Delta State	Jackson State	Miss. State	Miss. Univ. for Women	Miss. Valley State	Univ. of Miss.	Univ. of So. Miss. + Gulf Park
Number of Other Residential Units, Sleeping Quarters, Guest Rooms	1,647	71	84	45	298	40	120	480	509**
NASF of Other Residential Units	770,435	38,105	49,886	34,405	178,851	37,208	47,395	215,789	168,796
Residential NASF Now Vacant, Storage, Under Renovation	272,415	16,954	7,825	0	22,354	126,332	0	56,917	42,033

* Jackson State Rents 52 Rooms (104 beds) in a nearby Travelodge for a student dormitory and these beds are not included in this number.

** 212 Beds Gulf Park

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puses at the beginning of major campus expansion in the state of Mississippi.

The amount of space per capita shows a similar pattern of differences between Jackson State and the TWI universities through 1979/80 (Table 11). In the past five years a 20% decline in enrollment at Jackson State has increased the proportions of space per capita slightly above the University of Southern Mississippi with its expanding enrollment, but still below the other TWI's. In the decade of the 1970's slightly more space (over 500,000 GSF) was added at Jackson State than at USM (440,000 GSF) but Jackson State's NASF remained around one-third of USM's. Comparisons between Jackson State, University of Mississippi and Mississippi State show the differences between NASF varied around one-half the TWI's despite additions of 469,000 GSF at Ole Miss and 360,000 GSF at Mississippi State.

Delta State and Mississippi Valley State: During the early years of campus expansion Delta State and MVS paralleled each other's increases to campus space. Major growth at MVS in the early 1970's exceeded Delta State, by 1984/85 MVS had 25% more space than Delta State. In 1980, MVS's NASF was slightly less than Delta State's but this difference has been reversed in recent years with enrollment declines at MVS and a sharp enrollment increase at Delta State.

Alcorn and Mississippi State: In 1960/61, Alcorn campus space was 14% that of Mississippi State's. After 25 years and almost a million GSF added at Alcorn it was one-fourth Mississippi State's campus space; space added at Mississippi State was almost 3.3 million GSF. Differences between NASF were smaller; Alcorn's one-third of Mississippi State's in 1984/85 due in part to general use facilities with higher utilization rates than at the larger institution.

TABLE 11

SPACE PER FTE – RESEARCH UNIVERSITIES

	1960/61	1964/65	1969/70	1974/75	1979/80	1984/85
a. GSF/FTE						
Jackson State	184.26	362.17	202.22	184.95	170.19	246.69
TWI'S						
Mississippi State	403.54	501.11	465.37	408.03	454.78	469.61
Univ. of Mississippi	452.11	506.15	415.33	391.91	425.17	498.58
Univ. So. Mississippi	240.98	389.42	281.58	251.55	314.95	266.62
TWI's Average GSF/FTE	365.54	465.56	387.42	350.50	398.30	411.60
b. NASF/FTE						
Jackson State	0.00		132.62	138.17	144.73	199.58
TWI'S						
Mississippi State	0.00		302.29	274.01	263.80	290.78
Univ. of Mississippi	0.00		282.29	267.81	269.13	301.41
Univ. So. Mississippi	0.00		189.01	176.50	198.43	168.30
TWI's Average NASF/FTE	0.00		257.86	239.44	243.79	253.49

5. PLANT INVESTMENT

BUILDINGS

The total book value of the eight campuses increased from $118 million to $259 million in the past 20 years. These amounts were actual costs for plant additions of new construction and major repairs and renovations accumulated each year. Decreasing value in construction dollars due to inflation is acknowledged in campus comparisons at five-year increments from 1964/65 to 1984/85. Calculations of replacement values provide constant dollar comparisons made later in this section of the report.

Amounts spent in book and replacement values (Tables 12 and 13) and book value and replacement value per FTE (Tables 14, 15, and 16) provides the bases for comparisons between institutions. Plant replacement values have been developed by using Means' Cost Indexes for Jackson based on 1980 State Building Commission data to calculate values for 1964/65 to 1974/75. Data reported by the State Building Commission are used for 1979/80 and 1984/85.

Universities: The $33 million added book value at Jackson State during the past 20 years compares to $34 million at USM, $45 million at Ole Miss and over $70 million at Mississippi State. The differences between total book value at Jackson State and the TWI universities in 1964/65 represent the historic accumulation of building. Despite considerable investment in each five year period from 1964/65, Jackson State remains below the overall plant investment levels at the TWI's; approximately $40 million at Jackson State, $52 million at USM, $72 million at Ole Miss and $107 at Mississippi State.

Plant replacement values, calculated in constant 1984/85 dollars, indicate the differences between Jackson State and TWI universities for the space accumulated by 1964/

TABLE 12

PLANT INVESTMENT – BOOK VALUE

	1964/65	1969/70	% Inc.	1974/75	% Inc.	1979/80	% Inc.	1984/85	% Inc.	Increase 1964/65-1984/85
THI's										
Alcorn State	$5,825,191	$11,264,688	127.7%	$17,191,880		$23,507,789		$28,571,886	21.5%	$22,746,695
Jackson State	$6,117,525	$13,063,363	108.8%	$22,986,582		$28,593,894		$39,641,880	38.5%	$33,524,355
Mississippi Valley State	$6,159,820	$10,108,766	64.1%	$18,478,860		$21,097,241		$30,940,869	46.7%	$24,781,049
Subtotal THI's	$18,102,736	$36,434,817		$58,657,108		$73,198,924		$99,154,635		$71,051,899
TWI's										
Delta State	$6,122,498	$11,910,808	94.5%	$17,659,705		$24,387,541		$28,705,010	17.7%	$22,582,512
Mississippi State	$37,143,358	$54,294,398	46.2%	$75,987,861		$87,084,050		$107,404,296	23.3%	$70,260,938
Univ. of Mississippi	$11,375,822	$17,379,985	52.8%	$22,554,538		$25,573,290		$27,107,857	6.0%	$15,732,035
Univ. So. Mississippi	$27,295,416	$41,843,920	53.3%	$53,793,153		$62,946,258		$72,365,781	15.0%	$45,070,365
Subtotal TWI's	$81,937,094	$125,429,111	53.1%	$170,995,257		$200,991,139		$235,582,944	17.2%	$153,645,850
TOTAL	$100,039,830	$161,863,928	61.8%	$229,652,365		$274,190,063		$334,737,579	22.1%	$234,697,749
	$99,729,181	$150,265,387		$197,351,978		$237,368,780		$287,774,964		$188,045,783
	118,031,917	186,700,224		256,089,086		310,567,714		377,129,599		259,097,682

TABLE 13

PLANT INVESTMENT – REPLACEMENT VALUE

	1964/65	1969/70	% Inc.	1974/75	% Inc.	1979/80	% Inc.	1984/85	% Inc.	Increase 1964/65-1984/85
TBI's										
Alcorn State	$10,701,096	$21,277,828	98.8%	$35,048,475	64.7%	$38,150,443	8.9%	$49,915,240	30.8%	$39,214,144
Jackson State	$12,242,349	$22,340,292	82.5%	$34,988,240	56.6%	$56,798,630	62.3%	$74,315,678	30.8%	$62,073,329
Mississippi Valley State	$12,229,539	$20,112,508	64.5%	$39,987,970	98.8%	$40,787,478	2.0%	$43,837,040	7.5%	$31,607,501
Subtotal TBI's	$35,172,984	$63,730,628		$110,024,685		$135,736,551		$168,067,958		$132,894,974
TWI'S										
Delta State	$11,992,239	$18,040,762	50.4%	$29,853,880	65.5%	$30,433,500	1.9%	$63,169,993	107.6%	$51,177,754
Mississippi State	$62,245,953	$96,796,986	55.5%	$137,912,250	42.5%	$246,904,315	79.0%	$305,721,970	23.8%	$243,476,017
Mississippi Univ Women	$22,434,678	$34,575,086	54.1%	$48,577,585	40.5%	$61,086,546	25.8%	$63,485,898	3.9%	$41,051,220
Univ. of Mississippi	$48,405,525	$68,603,184	41.7%	$99,405,637	44.9%	$121,799,304	22.5%	$199,526,432	63.8%	$151,120,907
Univ. So. Mississippi	$44,143,743	$51,773,880	17.3%	$74,290,688	43.5%	$106,562,878	43.4%	$120,193,938	12.8%	$76,050,195
Subtotal TWI's	$189,222,138	$269,789,818		$390,040,035		$566,786,543		$752,098,231		$562,876,093
TOTAL	224,395,122	333,520,446		500,064,720		702,523,094		920,166,189		695,771,067

TABLE 14

PLANT INVESTMENT – BOOK VALUE PER FTE

	1964/65	1969/70	1974/75	1979/80	1984/85
TBI's					
Alcorn State	$4,140	$5,562	$7,363	$12,105	$12,993
Jackson State	$3,273	$3,074	$4,253	$4,307	$7,161
Mississippi Valley State	$3,864	$4,375	$6,950	$8,086	$9,185
TBI Average	$3,759	$4,337	$6,188	$8,166	$9,779
TWI'S					
Delta State	$4,117	$4,879	$6,641	$9,453	$8,265
Mississippi State	$6,280	$6,787	$7,867	$8,270	$10,052
Mississippi Univ Women	$4,746	$7,134	$9,497	$12,962	$17,233
Univ. of Mississippi	$5,994	$6,586	$7,423	$7,488	$9,644
Univ. So. Mississippi	$3,296	$3,512	$3,244	$4,171	$4,884
TWI Average	$4,887	$5,780	$6,934	$8,469	$10,016

TABLE 15

PLANT INVESTMENT – REPLACEMENT VALUE PER FTE

	1964/65	1969/70	1974/75	1979/80	1984/85
TBI's					
Alcorn State	$7,606	$8,922	$15,010	$19,645	$22,699
Jackson State	$6,343	$5,258	$6,473	$8,555	$13,357
Mississippi Valley State	$7,672	$8,707	$15,039	$15,633	$19,227
TBI Average	$7,207	$7,629	$12,174	$14,611	$18,427
TWI'S					
Delta State	$8,065	$7,391	$11,227	$11,796	$18,189
Mississippi State	$10,523	$12,100	$14,281	$23,448	$28,612
Mississippi Univ Women	$9,359	$14,193	$20,454	$30,961	$40,360
Univ. of Mississippi	$10,629	$10,799	$13,717	$14,490	$26,589
Univ. So. Mississippi	$8,178	$7,321	$8,804	$11,892	$11,248
TWI Average	$9,351	$10,361	$13,697	$18,517	$25,000

TABLE 16

PLANT INVESTMENT – RESEARCH UNIVERSITIES
VALUE PER FTE

	1964/65	1969/70	1974/75	1979/80	1984/85
a. Book Value/FTE					
TBI					
Jackson State	$3,273	$3,074	$4,253	$4,307	$7,161
TWI'S					
Mississippi State	$6,280	$6,787	$7,867	$8,270	$10,052
Univ. of Mississippi	$5,994	$6,586	$7,423	$7,488	$9,644
Univ. So. Mississippi ...	$3,296	$3,512	$3,244	$4,171	$4,884
TWI'S AVERAGE/FTE	$5,190	$5,628	$6,178	$6,643	$8,193
b. Replacement Value/FTE					
TBI					
Jackson State	$6,343	$5,258	$6,473	$8,555	$13,357
TWI'S					
Mississippi State	$10,523	$12,100	$14,281	$23,448	$28,612
Univ. of Mississippi	$10,629	$10,799	$13,717	$14,490	$26,589
Univ. So. Mississippi ...	$8,178	$7,321	$8,804	$11,892	$11,248
TWI'S AVERAGE/FTE	$9,777	$10,073	$12,267	$16,610	$22,150

65 and the value added through 1984/85 (Table 13). As space was built at each campus through 1984/85, the differences between campuses becomes significant. Even with an added value of over $60 million at Jackson State to a total of $74 million by 1984/85, it falls below the total $120 million at USM, almost $200 million at Ole Miss and over $305 million at Mississippi State.

Delta State and Mississippi Valley State: From a similar starting point in book value and replacement value in 1964/65, Delta State rapidly increased over MVS in the past ten year. (Note: Delta State's 1980 Replacement Value is used as reported to the State Building Commission. This entry is inaccurate considering plant investments reported from 1974/75 to 1979/80). During the past 20 years, Delta State's added book value was $22.6 million, compared to $14.8 at MVS. Replacement Value in 1984/85 at Delta State was $20 million higher than at MVS. This can be attributed somewhat to the effects of high inflation in the past ten years when Delta State added almost $11 million in book value compared to around $2.5 million at MVS.

Alcorn State and Mississippi State: In 1964/65 Alcorn's book value was approximately one-sixth of Mississippi State's. Even with almost $23 million of plant book value added at Alcorn in the next twenty years, the over $70 million added at Mississippi State maintained the gap between the two campuses. Differences between replacement values at the two campuses reflect major investments at Mississippi State during high inflation of the 1970's and the expensive square foot costs of veterinary medicine space.

EQUIPMENT

Plant investment in equipment, as reported on campus biannual financial reports from 1964/65 to 1979/80

(Tables 17 and 18) is another measure of the state's allocation of resources. It is expected that equipment expenditures should show significant difference between undergraduate and graduate institutions due to the expensive nature of research missions. However, availability or lack of equipment can enhance or hinder a campus' ability to conduct teaching, research or community service. It also can be considered as important influence on a campus' attractiveness to students and faculty.

Total book value of equipment in the IHL System increased from over $18 million in 1964/65 to $71.5 million in 1984/85. The overall share of investment in equipment at the TBI's compared to the TWI's was not proportionate to plant additions. While plant additions at TBI's were running around half the TWI's from 1964/65 to 1984/85, equipment expenditures were approximately one-fourth. Jackson State did not fare well compared to the TWI universities. After 20 years, the increase in equipment value of $2.7 million at Jackson State is compared to $16.2 each at USM and Ole Miss, and $23 million at Mississippi State. On a per capita basis, Jackson State did not surpass one-fourth the equipment expenditures at the TWI universities.

Comparisons of Delta State and MVS, and Alcorn and Mississippi also show differences between the TBI's and TWI's. Delta State's total increase ($5.5 million) from 1964/65 to 1984/85 more than doubled MVS's ($2.5 million). Alcorn's increase of $3.2 million is contrasted by the $23 million at Mississippi State.

6. CONCLUSIONS

Until 1954, the State of Mississippi maintained a dual system of higher education. This report evaluates the facilities aspect of whether the State has maintained or eliminated a racially dual system of higher education.

TABLE 17

PLANT INVESTMENT – EQUIPMENT PER FTE
1964/65, 1969/70, 1974/75, 1979/80

	1964/65	$/FTE	1969/70	$/FTE	1974/75	$/FTE	1979/80	$/FTE	Increase 1964/65-1979/80
TBI'S									
Alcorn State	$895,998	$637	$1,354,173	$568	$2,432,439	$1,042	$4,135,872	$2,130	$3,239,874
Mississippi Valley State	$437,526	$74	$1,526,444	$661	$1,836,825	$691	$2,886,964	$1,107	$2,449,438
Jackson State	$763,178	$395	$960,905	$226	$2,346,008	$434	$3,443,607	$519	$2,680,429
TBI'S Subtotal	$2,096,702		$3,841,522		$6,615,272		$10,466,443		$8,369,741
TWI'S									
Delta State	$822,182	$553	$1,212,501	$497	$1,794,201	$675	$6,368,442	$2,468	$5,546,260
Mississippi State	$6,045,169	$1,022	$9,520,294	$1,190	$17,395,362	$1,801	$29,087,006	$2,762	$23,041,837
Mississippi Univ. Women	$1,498,303	$625	$1,751,336	$719	$2,329,415	$981	$3,636,916	$1,843	$2,138,613
Univ. of Mississippi	$4,881,060	$1,072	$7,694,027	$1,211	$13,973,551	$1,928	$21,076,932	$2,507	$16,195,872
Univ. So. Mississippi	$2,970,892	$550	$5,569,007	$787	$11,535,432	$1,367	$19,162,351	$2,138	$16,191,459
TWI'S Subtotal	$16,217,606		$25,747,165		$47,027,961		$79,331,647		$63,114,041
TOTAL	$18,314,308		$29,588,687		$53,643,233		$89,798,090		$71,483,782

TABLE 18

PLANT INVESTMENT – EQUIPMENT PER FTE
RESEARCH UNIVERSITIES

	1964/65	$/FTE	1969/70	$/FTE	1974/75	$/FTE	1979/80	$/FTE	Increase 1964/65-1979/80
TBI									
Jackson State	$763,178	$395	$960,905	$226	$2,346,008	$434	$3,443,607	$519	$2,680,429
TWI'S									
Mississippi State	$6,045,169	$1,022	$9,520,294	$1,190	$17,395,362	$1,801	$29,087,006	$2,762	$23,041,837
Univ. of Mississippi	$4,881,060	$1,072	$7,694,027	$1,211	$13,973,551	$1,928	$21,076,932	$2,507	$16,195,872
Univ. So. Mississippi	$2,970,892	$550	$5,569,007	$787	$11,535,432	$1,367	$19,162,351	$2,138	$16,191,459
TWI'S Average	$13,897,121		$22,783,328		$42,904,345		$69,326,289		$55,429,168

Three key indicators were used in this study of a major expansion period of the State's system of higher education: 1) enrollment; 2) campus space; and 3) plant investment in buildings and equipment. Extensive additions to campus space and investments in plant were made from 1953-54 to 1984/85 at the eight campuses in the IHL system. Both traditionally black institutions (TBI) and traditionally white institutions (TWI) benefited from these additions and investments.

The difficult research question is whether these changes at the TBI campuses altered their character as defined by missions, academic programs, and physical characteristics. Although the focus of this study is facilities, the closely interwoven relationships between factors contributing to a campus' character must be recognized in shaping analyses and drawing final conclusions.

Bringing together issues of facilities, campus character, and vestiges of a racially dual system represents challenges in formulating a suitable methodology of investigation. Traditional methods of analyzing campuses on a comparative basis or by normative criteria are "color blind". Indeed, they may be appropriate where highly detailed data for a suitable time period is available for comparative purposes. This was not the case in Mississippi.

Data on enrollments are available from 1953/54 to 1984/85 for all eight IHL campuses. Extrapolations from recent State Building Commission reports provided information on total amounts of campus space and resource allocation in the form of plant investment for buildings. Using these data, a series of analyses were developed for relative amounts of campus space and plant investment and then calculations made on per capita (FTE) basis. The patterns emerging from these analyses and calculations were that the State of Mississippi added a significant amount of space and major investments were made in

plant. In general terms, the distributions between TBI's and TWI's were proportional; that is, three-eighths of the total space added and plant investment occurred at the three TBI's of the eight campus system.

Did this distribution maintain or eliminate the racially dual system in existence at the beginning of the State's expansion of its higher education system? The question must be placed in reference to the character of the TWI's in 1953/54. At that time, Alcorn A&M, Jackson State, and the recently founded Mississippi Valley State were undergraduate institutions with limited missions in teaching, research, and community service. The campuses were small in enrollments and in facilities. And their racial identification provided a character separate from the State's TWI's.

Fundamental to this question is the need to compensate for relative positions in terms of missions, programs, and character of the campuses in 1953/54. The role of enrollments is also an important issue because of the opportunities inherent in altering a campus' character by extension which is enrollment driven. Furthermore, the modification of a single race campus can be more readily achieved by expanding the total number of students and enhancing its attractiveness by expanded or new programs and improved facilities by renovations, additions and new construction.

Attractiveness and character are a subjective set of attributes of a campus. A recently published study by Carnegie Foundation for the Advancement of Teaching [12] explored this question by asking students how they chose a college. For 62 percent of the students, "appearance of the grounds and buildings" was the most influential factor during a

[12] Boyer, Ernest L. *College: The Undergraduate Experience in America*, New York: The Carnegie Foundation for the Advancement of Teaching (1987).

campus visit. Fifty percent cited student activities and friendly students. Less frequently mentioned were contact with faculty, classes visited, and counseling received. A visit prompted by information on the campus from peers, family, and counselors contributed to the initial attraction.

The attractiveness of Alcorn, Jackson State, and Mississippi Valley State to other race students in 1953/54 was virtually nonexistent. A wider array of programs and physical facilities at the TWI's offered little reason for white students to consider the three black colleges. Students considering higher education followed William Faulkner's thoughts about Mississippi: " . . . the land where he and his people were born and to understand that a man would have to act as the land where he was born had trained him to act".[13]

Arriving at one of the three TBI compuses today without students, faculty, or staff present, one would find little differences from similar institutions elsewhere in the country. Racial characteristics are not found in unoccupied buildings, vacant grounds, or empty parking lots. As one begins to take up the comparisons between the TBI's and TWI's, differences begin to emerge, especially in the light of changes over the past thirty years.

Alcorn, Jackson State, and Mississippi Valley State are characterized today as they were thirty years ago and as they were at their founding as predominately black institutions. This is not due to facilities alone. Perceptions of the quality of academic programs and the traditional role of a campus in a system of higher education also influence characterizations of a campus. The buildings, grounds, and equipment combine with reputations of teaching, academic programs, and campus life to make a campus attrac-

[13] Faulkner, William. *Light in August*, New York: Random House, 1932, P241.

tive to potential students. Current demographics and the fiscal situation in the State of Mississippi may limit choices. However, thirty years ago, conditions did permit changes in the State's structure of higher education.

From an enrollment at the eight IHL campuses in 1953/54 of approximately 10,000 students (FTE), 37,000 students were added to reach the peak enrollment of 45,000. Data available on plant expenditures from 1959/60 to 1984/85 reports $310 million in actual construction expenditures. The replacement value in today's cost of these expenditures from 1964/65 to 1984/85 increased from approximately $224 million to over $920 million. Campus space added, 8.6 million gross square feet from 1959/60 to 1984/85, was part of this allocation of the State's resources for higher education (Table 19).

It is undeniable that the enormous expansion of campus space and plant investments since 1953/54 afforded opportunities to compensate for the character of the three TBI's and alter their attractiveness to other race students. By its approval or rejection of requests for facilities to accommodate increased enrollments and house expanded or new academic programs and support facilities—libraries, student unions, recreation opportunities, and student residences—the State's allocation of resources reflected its higher education policies.

Jackson State's facilities are appropriate for an undergraduate institution with modest opportunities for graduate programs and research. The buildings and equipment necessary for graduate programs and research were not adequately provided during its enrollment growth to effectively compete with programs expanded or added at Ole Miss, Mississippi State University, or the University of Southern Mississippi. Student residence opportunities at Jackson State remain limited, even after recent additions, which continue to inhibit attractiveness to other race students.

TABLE 19

PLANT ADDITIONS – 1959/60 to 1984/85

	1959/1960 to 1964/65		1965/66 to 1969/70		1970/71 to 1974/75		1975/76 to 1979/80		1980/81 to 1984/85		1959/60 to 1984/85	
	$	GSF	$	GSF	$	GSF	$	GSF	$	GSF	$	GSF
1. ALL CAMPUSES												
TBI'S												
Alcorn State	$2,166,675	153,304	$2,356,857	457,463	$5,290,366	232,226	$8,658,703	224,571	$5,233,822	77,932	$23,706,423	1,145,496
Jackson State	$10,852,276	69,938	$7,067,700	418,837	$5,410,721	175,859	$8,997,853	218,735	$11,326,317	166,199	$43,654,867	1,049,568
Miss. Valley St	$3,272,431	357,778	$2,993,980	184,545	$8,892,059	397,556	$2,618,381	61,600	$598,739	13,200	$18,375,590	1,014,679
Subtotal TBI'S	$16,291,382	581,020	$12,418,537	1,060,845	$19,593,146	805,641	$20,274,937	504,906	$17,158,878	257,331	$85,736,880	3,209,743
TWI'S												
Delta State	$2,537,985	159,159	$5,107,173	247,937	$5,349,834	144,301	$10,914,279	205,284	$1,874,323	3,200	$25,783,594	759,881
Mississippi St	$6,908,039	348,311	$11,046,253	1,437,614	$9,312,600	352,084	$13,932,577	464,222	$37,282,452	525,953	$78,481,921	3,128,184
Miss Univ Women	$4,114,569	270,655	$6,511,182	680,854	$1,949,501	37,848	$5,904,114	151,360	$1,526,747	0	$20,006,113	1,140,717
Univ of Miss.	$8,328,605	648,835	$11,274,077	587,977	$6,869,044	236,074	$20,995,222	425,914	$9,233,063	168,158	$56,700,011	2,066,958
Univ So Miss.	$10,283,281	810,867	$6,043,786	399,427	$3,023,952	115,689	$9,033,891	233,052	$15,441,248	20,393	$43,826,158	1,579,428
Subtotal TWI'S	$32,172,479	2,237,827	$39,982,471	3,353,809	$26,504,931	885,996	$60,780,083	1,479,832	$65,357,833	717,704	$224,797,797	8,675,168
TOTAL	$48,463,861	2,818,847	$52,401,008	4,414,654	$46,098,077	1,691,637	$81,055,020	1,984,738	$82,516,711	975,035	$310,534,677	11,884,911
2. RESEARCH UNIVERSITIES												
Jackson State	$10,852,276	69,938	$7,067,700	418,837	$5,410,721	175,859	$8,997,853	218,735	$11,326,317	166,199	$43,654,867	1,049,568
TWI'S												
Mississippi St.	$6,908,039	348,311	$11,046,253	1,437,614	$9,312,600	352,084	$13,932,577	464,222	$37,282,452	525,953	$78,481,921	3,128,184
Univ of Miss.	$8,328,605	648,835	$11,274,077	587,977	$6,869,044	236,074	$20,995,222	425,914	$9,233,063	168,158	$56,700,011	2,066,958
Univ So Miss.	$10,283,281	810,867	$6,043,786	399,427	$3,023,952	115,689	$9,033,891	233,052	$15,441,248	20,393	$43,826,158	1,579,428
Total TWI'S	$25,519,925	1,808,013	$28,364,116	2,425,018	$19,205,596	703,847	$43,961,690	1,123,188	$61,956,763	714,504	$179,008,090	6,774,570
3. CLEVELAND AREA												
Delta State	$2,537,985	159,159	$5,107,173	247,937	$5,349,834	144,301	$10,914,279	205,284	$1,874,323	3,200	$25,783,594	759,881
Miss Valley St.	$3,272,431	357,778	$2,993,980	184,545	$8,892,059	397,556	$2,618,381	61,600	$598,739	13,200	$18,375,590	1,014,679
4. LAND GRANT												
Alcorn State	$2,166,675	153,304	$2,356,857	457,463	$5,290,366	232,226	$8,658,703	224,571	$5,233,822	77,932	$23,706,423	1,145,496
Mississippi St.	$6,908,039	348,311	$11,046,253	1,437,614	$9,312,600	352,084	$13,932,577	464,222	$37,282,452	525,953	$78,481,921	3,128,184

SOURCES: Mississippi State Building Commission
Surveys of State Owned Buildings (1980, 1982, 1984, 1986)

As proximate campuses serving overlapping service areas and statewide population, Mississippi Valley State (MVS) and Delta State (DS) appear to be comparable in many aspects. They are undergraduate institutions. Enrollment growth during the State's overall expansion was similar until a sharp divergence in the early 1980's. From parity in 1980, MVS enrollments declined while DS's increased to a 50 percent difference: in 1984/85, respectively, 2,280 FTE students at MVS and almost 3,500 FTE students at DS. The enrollment-driven facilities provided equitably at the two proximate campuses failed to change the character of MVS. The State's policies of resource allocation for buildings, equipment, and grounds did not enhance MVS to adequately attract other race students.

The State's two land grant institutions, Alcorn and Mississippi State University (MSU), also saw expansions in enrollment and additions to facilities during the past thirty years. However, these changes did not alter the comparable position of the campuses from 1953/54 to 1984/85. Alcorn's enrollment and campus space was about one-fourth MSU in 1953/54 and was similar thirty years later. The difference in plant replacement value from 1964/65 to 1984/85 shows increases of approximately $40 million at Alcorn and $240 million at MSU, a consistent ratio of plant replacement value for the past twenty years. Despite the expansion and change at Alcorn, it has not reached parity in scope of programs or amount and type of facilities compared to MSU.

A summary of the data for the key indicators (Appendix A) brings together the changes in enrollment, campus space, and plant investments during the State of Mississippi's major period of higher education expansion. These data and observations from campus visits and published information guide the conclusion that a dual system of higher education exists in the State of Mississippi with respect to facilities.

A final note. Facility requests by the eight IHL institutions for Fiscal Year 1986 (Appendix B) will require future resource allocation decisions. They are offered as guidance in choices in making these future decisions.

7. APPENDICES

Appendix A: Summary of Eight Campuses, 1953/54-1984/85

Appendix B: Fiscal Year 1986, Board of Trustees of State Institutions of Higher Learning. Preplanning, Capital Improvement, and Repair and Renovation Project Requests.

The physical facilities of the eight higher education campuses administered by the Board of Trustees of State Institutions of Higher Learning (IHL) represent buildings constructed over the past 150 years (Figure 1). _____

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_____ Because of the uniqueness of this type of investigation, analyses must proceed on an exploratory basis: first, by gathering data and gaining familiarization with the campuses; second, by understanding the relationships between campuses in the System regarding missions, academic programs, and System policies concerning institutional developments; and third, examining the conditions of the individual institutions during their major period of expansion in the post World War II period which have created their present character.

The character of an institution can be generally described by its mission, traditions, and academic programs. Routes of access, topography, architectural styles of buildings, types and characteristics of facilities, and relationships of open space and buildings help to define cam-

pus character. Physical characteristics of a campus also contribute to images that are part of the subjective impression of a campus. General terms of "research university", "liberal arts college", "technical institution", "rural residential", or 'urban" also

The central question of the research and analyses conducted for this report is _____ the allocation of resources for facilities—funds for capital expenditures, plant additions, and major repairs and renovations—during the past thirty years _____

_____That year was selected for beginning the analyses of campus changes undergoing a period of dramatic expansion. A coincidence was the preparation of a comprehensive report (the Brewton Report) with useful data on facilities in 1953/54.

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In this regard, viewing a campus and comparing it to other components of a system this year, or at any single year, does not provide an adequate basis of evaluation. Each year folds into the next with changes occurring in academic programs and facility needs. _____

_____

_____

Planning an existing campus for program and enrollment expansion or the creation of a new campus can be based on normative criteria for space allocated to specific activities

By collecting data over the thirty year study period, a series of questions can be framed. For example, at the conclusion of the 1954 Brewton Study,[3] did the State of Mississippi move affirmatively to eliminate the differences in character between traditionally black and traditionally white institutions? Did the State of Mississippi compensate for the difference in each biannual capital appropriation, accumulating into thirty years of resource allocation by building facilities for academic programs and support services at the traditionally black institutions (TBI's)? Was the level of compensation adequate to change the character of the TBI campuses?

The central theme of this report then becomes not one of comparability of recent resource allocation practices and current facilities but whether policies of the state maintained or eliminated the dual system existing in 1953. It is worth noting that current procedures and practices for capital funding could imply equitable treatment of all IHL campuses. Furthermore, the possibility of no discernible differences in amount of space or plant value per FTE today could suggest that a dual system is no longer being maintained. From a research point of view, the examination goes

beyond current practices and conditions.

A basic research proposition can be framed as follows: if at the beginning of Mississippi's major expansion in higher education the institutions were different in character or historically had received dissimilar treatment in resource allocation for facilities, then special treatment would have been necessary to change the character of the TBI's.

[3] John R. Brewton. Higher Education in Mississippi, Digest of the Survey Report, Board of Institutions of Higher Learning, 1954.

2. SCOPE AND METHOD OF INVESTIGATION

In 1980/81 and 1986/87 an extensive review was made of available documents along with visits to each campus. Interviews were held with campus administrators and staff, and with staff of the IHL to gain additional information.

An initial review of documents showed that there were limitations in the availability and accuracy of data during the post World War II period of growth. This point has been reinforced by the 1979 report of Dober and Associates [4] on campus conditions " . . . the ability to make exact statements about facilities begins with serious limitations." Thorough efforts were undertaken to overcome these limitations by obtaining data and commentary for significant indicators of resource allocation from 1953/54 to 1984/85. An initial sorting of information suggested that data on campus space (reported as gross square feet or net assignable square feet) and plant investments in capital expenditures for plant additions and major repairs and renovations was available throughout the study period although

[4] Dober and Associates, Inc.: Physical Facilities and Conditions at Eight University Campus Operated by the Board of Trustees of Higher Learning, State of Mississippi. New York: Academy for Educational Development, 1979.

Until 1954, the State of Mississippi maintained a dual system of higher education. ___

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Three key indicators were used in this study of a major expansion period of the State's system of higher education: 1) enrollment; 2) campus space; and 3) plant investment in buildings and equipment. Extensive additions to campus space and investments in plant were made from 1953-54 to 1984/85 at the eight campuses in the IHL system. Both traditionally black institutions (TBI) and traditionally white institutions (TWI) benefited from these additions and investments.

The difficult research question is whether these changes at the TBI campuses altered their character as defined by missions, academic programs, and physical characteristics. Although the focus of this study is facilities, the closely interwoven relationships between factors contributing to a campus' character must be recognized in shaping analyses and drawing final conclusions.

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Data on enrollments are available from 1953/54 to 1984/85 for all eight IHL campuses. Extrapolations from recent State Building Commission reports provided information on total amounts of campus space and resource allocation in the form of plant investment for buildings. Using these data, a series of analyses were developed for relative amounts of campus space and plant investment and then calculations made on per capita (FTE) basis. The

patterns emerging from these analyses and calculations were that the State of Mississippi added a significant amount of space and major investments were made in plant. In general terms, the distributions between TBI's and TWI's were proportional; that is, three-eighths of the total space added and plant investment occurred at the three TBI's of the eight campus system.

___

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___ The question must be placed in reference to the character of the TWI's in 1953/54. At that time, Alcorn A&M, Jackson State, and the

APPENDIX A
SUMMARY – EIGHT CAMPUSES
1953/54 – 1984/85

	Alcorn State	Delta State	Jackson State	Mississippi State	Mississippi Univ for Women	Mississippi Valley State	Univ. of Mississippi	University of So. Miss. Hattiesburg	Eight Campus Total
1984/85[1]									
FTE	2,199	3,473	5,564	10,685	1,573	2,280	7,504	10,686	43,964
GSF	1,234,611	1,090,575	1,372,587	5,017,758	1,544,159	1,324,007	3,741,360	2,849,091	18,174,184
NASF	1,011,925	817,215	1,110,457	3,106,942	1,045,273	923,212	2,261,766	1,798,429	12,075,219
Investment – Book Value	$28,571,886	$28,705,010	$39,841,880	$107,404,296	$27,107,857	$20,940,869	$72,365,781	$52,192,020	$377,129,599
Investment – Replacement	$49,915,240	$63,169,993	$74,315,678	$305,721,970	$63,485,898	$43,837,040	$199,526,432	$120,193,938	$920,166,189
1979/80[2]									
FTE	1,942	2,580	6,639	10,530	1,973	2,609	8,406	8,961	43,640
GSF	1,235,159	1,132,725	1,129,882	4,788,851	1,544,132	1,296,244	3,573,981	2,822,252	17,523,226
NASF	1,063,087	900,383	960,874	2,777,780	1,045,273	912,318	2,262,304	1,778,132	11,700,151
Investment – Book Value	$23,507,789	$24,387,541	$28,593,894	$87,084,050	$25,573,290	$21,097,241	$6,946,258	$37,377,651	$310,567,714
Investment – Replacement	$38,150,443	$30,433,500	$56,798,630	$246,904,315	$61,086,546	$40,787,478	$121,799,304	$106,562,878	$702,523,094
1974/75[3]									
FTE	2,335	2,659	5,405	9,657	2,375	2,659	7,247	8,438	40,775
GSF	1,001,385	852,968	999,664	3,940,355	1,387,931	1,139,942	2,840,161	2,122,591	14,284,997
NASF	878,408	683,399	746,787	2,646,140	941,805	777,687	1,940,794	1,489,338	10,104,358
Investment – Book Value	$17,191,666	$17,659,705	$22,986,582	$75,967,861	$22,554,538	$18,478,860	$53,793,153	$27,376,721	$256,009,086
Investment – Replacement	$35,048,475	$29,853,880	$34,988,240	$137,912,250	$48,577,585	$39,987,970	$99,405,635	$74,290,685	$500,064,720
1969/70[4]									
FTE	2,385	2,441	4,249	8,000	2,436	2,310	6,353	7,072	35,246
GSF	818,378	693,872	859,242	3,722,961	1,329,811	773,558	2,638,584	1,991,300	12,827,706
NASF	585,729	610,607	563,492	2,418,298	900,225	584,214	1,793,371	1,336,658	8,792,594
Investment – Book Value	$13,264,688	$11,910,688	$13,063,383	$54,294,398	$17,378,985	$10,106,766	$41,843,920	$24,837,396	$186,700,224
Investment – Replacement	$21,277,828	$18,040,762	$22,340,292	$96,796,986	$34,575,086	$20,112,508	$68,603,184	$51,773,800	$333,520,446

[1] Mississippi State Bldg. Comm., Survey of State Owned Buildings (1984); Enrollments: U.S. Dept. of Education
[2] Mississippi State Bldg. Comm., Survey of State Owned Buildings (1980); Enrollments: Dober & Assoc. Capital Improvements Study (1981)
[3] Board of Trustees, Institutions of Higher Learning Biennial Report (1974/75). Replacement Costs @$35/s.f.
[4] Board of Trustees, Institutions of Higher Learning Biennial Report (1969/70). Replacement Costs @$26/s.f.

APPENDIX A – Continued
SUMMARY – EIGHT CAMPUSES
1953/54 – 1984/85

	Alcorn State	Delta State	Jackson State	Mississippi State	Mississippi Univ for Women	Mississippi Valley State	Univ. of Mississippi	University of So. Miss. Hattiesburg	Eight Campus Total
1964/65[1]									
FTE	1,407	1,487	1,930	5,915	2,397	1,594	4,554	5,398	24,682
GSF	509,576	571,059	582,969	2,964,093	1,068,318	582,359	2,305,025	2,102,083	10,685,482
NASF	$5,825,391	$6,122,498	$6,317,525	$37,143,358	$11,375,822	$6,159,820	$27,295,416	$17,792,087	$118,031,917
Investment – Book Value	$10,701,096	$11,992,239	$12,242,349	$62,245,953	$22,434,678	$12,229,539	$48,405,525	$44,143,743	$224,395,112
Investment – Replacement									
1960/61									
FTE	890	919	1,422	4,285	1,473	939	3,994	3,996	17,918
GSF	244,991	408,369	262,022	1,729,176	687,121	309,483	1,805,734	962,953	6,409,849
NASF									
Investment – Book Value									
Investment – Replacement									
1953/54									
FTE	541	423	1,048	2,451	820	185	2,197	2,289	9,954
GSF									
NASF									
Investment – Book Value									
Investment – Replacement									

[1] Board of Trustees, Institutions of Higher Learning Biennial Report (1969/70). GSF, SBC, Survey (1980)

APPENDIX B. **FY 1986**

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

University	*Preplanning* No. of Projects	*Preplanning* Amount	*Capital Improvements* No. of Projects	*Capital Improvements* Amount	*Repair and Renovation* No. of Projects	*Repair and Renovation* Amount
Alcorn State University	5	$15,340,000	4	$ 7,327,675	34	$ 3,942,032
Delta State University	2	7,000,000	15	30,700,000	18	3,365,000
Jackson State University	18	60,537,000	15	45,480,000	7	3,286,736
Mississippi University for Women	–	-0-	7	10,071,434	19	3,620,000
Mississippi State University	8	29,000,000	16	59,090,000	49	17,548,000
MAFES	6	11,011,500	–	-0-	35	2,323,650
MCES	–	-0-	–	-0-	2	120,000
MFPL	–	-0-	–	-0-	4	102,655
Mississippi Valley State University	2	7,980,391	4	4,974,436	24	975,157
University of Mississippi	13	64,383,680	18	35,076,876	95	14,098,977
University of Miss. Medical Center	–	-0-	5	60,090,000	27	11,782,400
University of Southern Mississippi	2	39,000,000	7	79,046,750	53	16,628,420
Gulf Park Campus	1	1,570,000	3	7,467,600	16	1,135,663
Gulf Coast Research Laboratory	2	5,150,182	1	927,410	12	664,179
Education and Research Center	–	-0-	–	-0-	4	383,840
Total	59	$240,973,323	95	$340,252,181	389	$79,976,709

March 1985

PROPOSED PROJECTS FOR CAPITAL IMPROVEMENTS FOR BOND ISSUE

1. Creative Arts Theatre and Communications Wing, Finishes, Furniture, and Equipment, Mississippi State University $ 1,700,000
2. Laundry Facility, Furniture and Equipment, Mississippi Valley State University 251,000
3. New Laundry Facility, University of Mississippi Medical Center 4,508,000
4. Power Plant, University of Mississippi 10,350,000
5. Water Storage Tank, Mississippi State University 1,100,000
6. Water System, Phase II and Phase III, University of Mississippi 983,000
7. McCain Engineering Building Renovation, Mississippi State University 4,800,000
8. Purchase Blackburn, Sally Reynolds and Adjoining Properties, Jackson State University 3,740,000
9. Renovate and Equip Classroom Complex Building Jackson State University 490,000
10. Health, Physical Education and Recreation Center and Track, University of Southern Mississippi 12,270,000
11. Stadium and Track, Alcorn State University 5,250,000

12.	Old Gymnasium – Physics, University of Mississippi	3,995,000
13.	Fine Arts Facility, Delta State University	4,500,000
14.	Agricultural Mechanics Laboratory, Mississippi State University	1,990,000
15.	Addition to Toxicology Building, Gulf Coast Research Laboratory	300,000
		$56,227,000
	Renovation and Repairs	18,000,000
	Total	$74,227,000

PRE-PLANNING

GS PRE-PLANNING LONG-RANGE SUMMARY 13D

1. SUMMARY FOR FISCAL YEAR 1987.
REQUEST DATE: March 22, 1985

2. INSTITUTION OR AGENCY
ALCORN STATE UNIVERSITY

3. CURRENT NEEDS (should be funded in the coming year):

Priority No.	*Project Title*	*Amount*
1	Science Building	$ 6,334,000
2		$
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 6,334,000

4. INTERMEDIATE NEEDS (should be funded in the next fiscal year):

Priority No.	*Project Title*	*Amount*
1	Business Building	$ 4,445,000
2	Library Addition	$ 3,391,570
3		$
4		$
5		$
6		$

Priority No.	*Project Title*	*Amount*
7		$
8		$
9		$
10		$
	TOTAL	$ 7,846,570

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*	*Amount*
1	Physical Plant Bldg., Warehouse & Motor Pool	$ 1,110,000
2	Greenhouse	$ 50,000
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$
11		$
12		$
13		$
14		$
15		$
16		$
17		$
18		$

Priority No.	*Project Title*	*Amount*
19		$
20		$
21		$
22		$
23		$
24		$
25		$
	TOTAL	$ 1,160,000

CAPITAL IMPROVEMENT

GS CAPITAL IMPROVEMENT LONG-RANGE SUMMARY 13E

1. **SUMMARY FOR FISCAL YEAR 1987.**
   REQUEST DATE: March 22, 1985

2. **INSTITUTION OR AGENCY**
   ALCORN STATE UNIVERSITY

3. **CURRENT NEEDS (should be funded in the coming year):**

Priority No.	*Project Title*	*Amount*
1	Stadium and Track	$ 5,250,000
2	Renovations for the Handicapped	$ 1,582,000
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 6,832,000

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Curtain and Natatorium Bleachers	$ 50,000
2	Security Building	$ 445,675
3		$

Priority No.	*Project Title*	*Amount*
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 495,675

5. **FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):**

Priority No.	*Project Title*	*Amount*
1		$
2		$
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$
11		$
12		$
13		$
14		$
15		$
16		$

Priority No.	*Project Title*		*Amount*
17		$	
18		$	
19		$	
20		$	
21		$	
22		$	
23		$	
24		$	
25		$	
	TOTAL	$	-0-

REPAIR & RENOVATION

GS DISCRETIONARY REPAIR AND RENOVATION LONG-RANGE SUMMARY **13F**

1. **SUMMARY FOR FISCAL YEAR 1986.**
   REQUEST DATE: March 22, 1985

2. **INSTITUTION OR AGENCY**
   ALCORN STATE UNIVERSITY

3. **CURRENT NEEDS (should be funded in the coming year):**

Priority No.	*Project Title*		*Amount*
1	Reroofing, Repairing and Painting Health, Physical Education and Recreation Complex	$	564,300
2	Renovation and Repairs of University Infirmary (Health Services)	$	120,282
3	Renovation of Water Plant	$	116,616
4	Stadium Erosion and Painting	$	29,794
5	Replacing Roof and Painting of President's Home	$	16,090
6	Roofing and Waterproofing, 1985	$	86,750
7	Reroofing Campus Union Building	$	70,768
8	Vault Doors for Registrar's Office	$	9,044
9	Repairs, Painting and Securing Entrances in Residence Halls	$	573,336

Priority No.	*Project Title*	*Amount*
10	Library Repairs and Improvements	$ 50,000
11	Renovation of Fine Arts Building	$ 114,119
	TOTAL	$ 1,751,099

4. INTERMEDIATE NEEDS (should be funded in the next fiscal year):

Priority No.	*Project Title*	*Amount*
1	Repair and Renovation of Eunice Powell Hall	$ 215,560
2	Repair of the Old Gym	$ 165,618
3	Dining Hall Re[illegible]	$ 251,112
4	Renovation of [illegible] and Sidewalks – Phase I	$ 405,000
5	Industrial Tech. Building Ceiling Repairs	$ 11,300
6	Renovation of Science-Library Building – Business Wing	$ 102,150
7	Electical Hook-ups in Industrial Technology Building	$ 5,650
8		$
9		$
10		$
	TOTAL	$ 1,156,390

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*	*Amount*
1	Renovation & Repairs – Old Admin. Bldg.	$ 19,987
2	Renovation and Expansion of Sound System in Health, Physical Ed. & Recreation Complex	$ 21,600
3	Securing the Industrial Technology Building	$ 27,000
4	Concrete Walk	$ 10,419
5	Agricultural Shop Improvement	$ 5,005
6	Repairs to & Air Conditioning of the Chapel	$ 148,125
7	Air Conditioning in Pressbox	$ 35,000
8	Renovation of Bowles Hall – Phase I	$ 265,265
9	Renovation of Dorm II (Repairs & Painting	$ 160,716
10	Renovation of Dormitory III	$ 120,514
11	Renovation of Belle Lettres Hall – Phase II	$ 205,887
12	Renovation of Fence	$ 11,025
13	Repair of Greenhouse	$ 4,000
	TOTAL	$ 1,034,543

DELTA STATE UNIVERSITY
Cleveland, Mississippi

February 1, 1985

PRE-PLANNING PROJECTS
1985-1986

	Priority	*Amount*	*Page*
1.	Fine Arts Facility	$4,500,000	1
2.	School of Nursing Facility	2,500,000	2
	Total	$7,000,000	

DELTA STATE UNIVERSITY
CAPITAL OUTLAY NEEDS
1985-1986
February 1, 1985

Priority	*Amount*	*Page*
1. Fine Arts Facility (If not funded for Pre-Planning)	$4,500,000	1
2. School of Nursing (If not funded for Pre-Planning)	2,500,000	2
or		
(2) Purchase and Complete Renovation Old City (Cleveland) Hospital into Nursing Facility	(1,500,000)	3
3. Library Expansion	2,500,000	4
4. Addition to Zeigel Hall, Music Facility	1,500,000	5
5. Addition to Wright Art Facility	1,500,000	6
6. Married Student Housing	2,000,000	7
7. Laundry Facility	1,250,000	8
8. Land Purchase to Include Houses & Lots Adjacent to Campus	2,000,000	9
9. Driver Training Classroom & Laboratory Facility	250,000	10
10. Art Laboratory & Sculpture Facility	200,000	11
11. Continuing Education Center	2,000,000	12
12. Dormitory for Women	2,500,000	13
13. Dormitory for Men	2,500,000	14
14. Business Building with Learning Laboratories	4,000,000	15
15. Administration Building	1,500,000	16
Total	$30,700,000	

REPAIR & RENOVATION

GS DISCRETIONARY REPAIR AND RENOVATION
LONG-RANGE SUMMARY **13F**

1. **SUMMARY FOR FISCAL YEAR 85-86**
   SUMMARY DATE: 2/15/85

2. **INSTITUTION OR AGENCY**
   DELTA STATE UNIVERSITY

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Renovate Whitfield Gym to Accommodate Classrm Needs	$ 175,000
2	Complete Repairs to Swimming Pool	$ 150,000
3	Complete Waterproofing, Caulking & Painting	$ 150,000
4	Renovate Classrm Areas & Office Needs to Accommodate Changes in Function	$ 125,000
5	Repairs to Track, Tennis Cts, Handball & F/B Bleachers	$ 250,000
6	Flooring repairs, Library, Married Stu Apts, Womens Dorms	$ 175,000
7	Roof Repairs	$ 250,000
8	Drainage Repairs	$ 175,000
9	Replace A/C & Htg Systems, Married Student Housing	$ 175,000
10	Install Smoke Detectors & Fire Alarms, Student Apts	$ 75,000
	TOTAL	$ 1,700,000

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Street & Parking Area Repairs	$ 250,000
2	Renovate Bathroom Facilities, Men's Dorms	$ 250,000
3	Repairs, Renovate & Install Inter-Communication Systems, Women's Dorms	$ 125,000
4	Install Metal Frame Scrs, Shade Screens & Storm Windows	$ 100,000
5	Repairs to Union Building	$ 80,000
6	Renovate Baseball Field to Include Lighting	$ 185,000
7		$
8		$
9		$
10		$
	TOTAL	$ 990,000

DELTA STATE UNIVERSITY
Cleveland, Mississippi
REPAIR & RENOVATION PROJECTS
1985-1986

Priority	*Amount*	*Page*
1. Renovation of Certain Areas, Whitfield Gym to Accommodate Classroom Area Needs for Military Science & Physical Education	$ 175,000	1
2. Complete Repairs to Swimming Pool & Pool Enclosure Areas	150,000	2
3. Complete Waterproofing, Caulking & Exterior & Interior Painting	150,000	3
4. Renovate Certain Classroom & Office Areas to Accommodate Changes in Function	125,000	4
5. Repairs to Track, Tennis Courts, Handball Courts, Intramural Fields & Football Stadium Bleachers	250,000	5
6. Flooring Repairs, Library, Married Student Apartments, Women's Dorms, Cafeteria	175,000	6
7. Roof Repairs	250,000	7
8. Drainage Repairs	175,000	8
9. Replace Air-Cond & Heating Systems, Married Student Housing	175,000	9
10. Install Smoke Detectors & Fire Alarms, Married Student Housing	75,000	10
11. Street & Parking Area Repairs	250,000	11

Priority	*Amount*	*Page*
12. Renovate Bathroom Facilities, Whittington-Williams, Bond-Carpenter, White & Court of Governors	250,000	12
13. Repairs & Renovation of Inter-Communication System, Women's Housing, Coliseum & Football Stadium	125,000	13
14. Install Metal Frame Screens, Shade Screens & Storm Windows, Certain Classrooms, Service & Housing Facilities (Energy Conservation)	100,000	14
15. Repairs to Union Building	80,000	15
16. Renovate Baseball Field to Include Lighting for Night Playing	185,000	16
17. Repairs to Existing Campus Lighting System by Installing New Fixtures on Existing Poles & Replacement of certain Overhead Lines to Better Light the Campus	250,000	17
18. Renovations to Accommodate the Handicapped	425,000	18
Total	$3,365,000	

PRE-PLANNING

GS PRE-PLANNING LONG-RANGE SUMMARY 13D

1. **SUMMARY FOR FISCAL YEAR 86**
   SUMMARY DATE: 1/31/85

2. **INSTITUTION OR AGENCY**
   JACKSON STATE UNIVERSITY

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Construct and Furnish a 300-Room Dormitory for Men	$ 5,800,000
2	Construct and Furnish a 300-Room Dormitory for Women	$ 5,800,000
3	Construct and Furnish a 50-Unit Complex for Married Couples	$ 1,250,000
4	Purchase Blackburn, Sally Reynolds and Adjoning Properties	$ 3,740,000
5	Renovate University Park Auditorium	$ 2,650,000
6	Renovate and Equip Classroom Complex Building	$ 490,000
7	Renovate Industrial Arts Annex	$ 3,500,000
8	Construct a Physical Plant and Central Store Bldg.	$ 1,000,000
9		$
10		$
	TOTAL	$ 24,230,000

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Renovate Desoto Property	$ 1,500,000
2	Construct New Baseball Complex	$ 1,500,000
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 3,000,000

5. **FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):**

Priority No.	*Project Title*	*Amount*
1	Construct 500-Room Student Dormitory	$ 7,500,000
2	Install Central Plant Facility	$ 3,000,000
3	Construct 50-Unit Complex for Married Couples	$ 1,263,000
4	Construct Parking Plaza Area	$ 6,000,000
5	Construct Athletic Dormitory	$ 6,000,000
6	Construct Office Facility Complex	$ 6,000,000

Priority No.	*Project Title*	*Amount*
7		$
8		$
9		$
10		$
11		$
12		$
13		$
14		$
15		$
16		$
17		$
18		$
19		$
20		$
21		$
22		$
23		$
24		$
25		$
	TOTAL	$ 29,763,000

CAPITAL IMPROVEMENT

GS CAPITAL IMPROVEMENT LONG-RANGE SUMMARY 13E

1. **SUMMARY FOR FISCAL YEAR 86**
   SUMMARY DATE: 1/31/85

2. **INSTITUTION OR AGENCY**
   JACKSON STATE UNIVERSITY

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Construct and Furnish a 300-Room Male Dormitory	$ 5,800,000
2	Construct and Furnish a 300-Room Female Dormitory	$ 5,800,000
3	Construct and Furnish a 50-Unit Complex for Married Couples	$ 1,250,000
4	Purchase Blackburn, Sally Reynolds and Adjoining Properties	$ 3,740,000
5	Renovate University Park Auditorium	$ 2,650,000
6	Renovate and Equip Classroom Complex	$ 490,000
7		$
8		$
9		$
10		$
	TOTAL	$ 19,730,000

4. INTERMEDIATE NEEDS (should be funded in the next fiscal year):

Priority No.	*Project Title*	*Amount*
1	Construct New Baseball Complex	$ 1,300,000
2	Construct Athletic Dormitory	$ 6,000,000
3	Construct Office Facility Complex	$ 6,000,000
4	Renovate Industrial Arts Annex	$ 3,500,000
5	Construct a Physical Plant Facility	$ 1,000,000
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 17,800,000

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*	*Amount*
1	Construct 500-Room Student Dormitory	$ 7,500,000
2	Install Central Plant Facility	$ 3,000,000
3	Construct 50-Unit Complex for Married Couples	$ 1,263,000
4	Construct Parking Plaza Area	$ 6,000,000
5		$
6		$

Priority No.	*Project Title*	*Amount*
7		$
8		$
9		$
10		$
11		$
12		$
13		$
14		$
15		$
16		$
17		$
18		$
19		$
20		$
21		$
22		$
23		$
24		$
25		$
	TOTAL	$ 17,763,000

JACKSON STATE UNIVERSITY
Jackson, Mississippi

January 31, 1985

Renovation and Repair Request

FY 86

		Estimated Cost	
I.	Roofing Repairs/ Replacement		
	A. Stewart Hall	$24,000	
	B. Ayer Hall	15,000	
	C. Physical Plant Annex	13,200	
	D. Education Building	15,800	
	E. Campus Union	37,000	
	F. Alexander North	12,000	
	G. Greenhouse	15,000	$132,000
II.	Street Repair and Resurfacing		
	A. Lynch Street	43,200	
	B. Tiger Trail	48,000	
	C. Union View	13,100	
	D. Prentiss Street	11,000	
	E. Central Street	14,000	
	F. Faculty Apartment Drive	10,200	
	G. Stewart Lane	10,400	
	H. College Park	10,700	
	I. North Campus	14,300	
	J. Rear Union View	12,100	187,000

JACKSON STATE UNIVERSITY
Jackson, Mississippi

January 31, 1985

Renovation and Repair Request – Continued

FY 86

		Estimated Cost
III.	Mechanical Renovations	
	A. Replace A/C Unit (Computer Center)	24,000
	B. Installation of HVAC System (Alexander Center)	250,000
	C. Replace HVA System (Stewart Hall)	150,000
	D. Repair or Replace Heat Pump (Administration Tower)	50,000
	E. Replace Cooling Tower (Classroom Complex)	33,000
	F. Install A/H Unit to Cool and Heat Lab in Shop Area (J.Y. Woodard Building)	25,000
	G. Repair or Replace HVAC System (West End of Just Hall of Science Building)	90,000
	H. Repair or Replace Chiller (North Dining Area)	71,000

JACKSON STATE UNIVERSITY
Jackson, Mississippi

January 31, 1985

Renovation and Repair Request – Continued

FY 86

			Estimated Cost	
III.	I.	Replace HVAC System (Industrial Arts Annex)	75,000	
	J.	Repair or Replace Heat Pump	20,000	
	K.	Replace Chiller (Campus Union)	120,000	
	L.	Repair Chiller and Add Zoning Units (Athletics and Assembly Center)	45,000	
	M.	Renovate Science Lab and Greenhouse	75,000	1,028,00
IV.		General Renovation		
	A.	Caulking and Window Replacement (Administration Tower)	50,000	
	B.	Ayer Hall Renovations	253,000	
	C.	Johnson Hall	90,000	
	D.	Dansby Hall	126,000	
	E.	Renovate Campus Utility System	77,000	
	F.	Physical Education Annex	72,000	

JACKSON STATE UNIVERSITY
Jackson, Mississippi

January 31, 1985

Renovation and Repair Request – Continued

FY 86

			Estimated Cost	
	G.	Renovate Science Lab and Greenhouse	25,000	
	H.	Library Wallpaper and Carpet Installation	108,000	
	I.	Renovate Interior (Faculty Apartments)	224,000	
	J.	Renovate Physical Plant Annex	46,000	1,071,000
V.		Code Renovations		
	A.	W. D. Blackburn Handicapped Elevator	65,000	
	B.	Library Smoke Detection System	43,000	
	C.	Renovate School of Education Building Handicapped Toilets	8,500	116,500
VI.		Dormitory Renovations		
	A.	Stewart Hall	144,000	
	B.	Jones Hall	79,118	
	C.	Sampson Hall	79,118	
	D.	Dixon Hall	150,000	452,236

JACKSON STATE UNIVERSITY
Jackson, Mississippi

January 31, 1985

Renovation and Repair Request – Continued

FY 86

		Estimated Cost	
VII.	Athletics Renovation		
	A. Tennis Court	166,000	
	B. Repair Baseball Park	84,000	
	C. Renovate Bowling Lanes	50,000	300,000
	Total		$3,286,736

MISSISSIPPI UNIVERSITY FOR WOMEN
Capital Improvement Needs

Priority Request
FY 1986

1.	Asbestos Abatement	$2,400,673.00
2.	Hooper Science Hall Renovation	1,463,547.00
3.	Parkinson Hall Renovation	1,597,411.00
4.	Fine Arts Building Renovation	1,109,803.00
	TOTAL REQUEST	$6,571,434.00

Priority Request
FY 1987

1.	Library Addition	1,500,000.00
	TOTAL REQUEST	$1,500,000.00

Priority Request
FY 1988

1.	Renovate Demonstration School	$1,000,000.00
	TOTAL REQUEST	$1,000,000.00

Priority Request
FY 1989-1991

1.	Martin Hall Renovation	$1,000,000.00
	TOTAL REQUEST	$1,000,000.00

March 22, 1985

MISSISSIPPI UNIVERSITY FOR WOMEN

Repair and Renovation Needs

Priority Request
FY 1986

1.	Campus Lighting Phase II		$ 113,00
2.	FY86 Roof Repairs		79,400
3.	PEAB Refinishing and Ventilation		205,300
	a. Refinishing	$ 68,000	
	b. Ventilation	137,000	
4.	Waterproofing Simmons, Columbus, Callaway and Pohl Intramural Building		103,270
5.	Hogarth Dining Center Improvements		290,000
	a. Ventilation Enhancements	$ 85,000	
	b. Cooling Tower Replacement	23,000	
	c. Freezer/Storage Relocation	181,600	
6.	Whitfield Hall Auditorium Seating		253,162
7.	Library Refurbishing		136,143
8.	Tennis Court Repairs		154,295
9.	Columbus/Hastings Halls Stabilization		181,542
	TOTAL REQUEST		$1,516,089

Priority Request
FY 1987

1.	Asbestos Abatement	100,000
2.	1987 Roof Repairs	200,000
3.	Campus Lighting Phase III	200,000
4.	1987 Steam Line Repair	100,000
5.	1987 Handicap Access	100,000
6.	1987 Campus Painting	60,000
	TOTAL REQUEST	$ 760,000

MISSISSIPPI UNIVERSITY FOR WOMEN

Repair and Renovation Needs—Continued

Priority Request
FY 1988

1.	1988 Asbestos Abatement	$ 100,000
2.	1988 Roof Repairs	200,000
3.	1988 Handicap Access	100,000
4.	Steam Line Extention	350,000
5.	1988 Campus Painting	60,000
	TOTAL REQUEST	$ 810,000

Priority Request
FY 1989-1991

1.	Roof Repairs	400,000
2.	Asbestos Abatement	300,000
3.	Heating Plant Upgrade	300,000
4.	Street Repairs	200,000
5.	Handicap Access	300,000
6.	Campus Painting	200,000
7.	Building Demolition	150,000
8.	Buildings Stabilization	300,000
	TOTAL REQUEST	$2,050,000

REPAIR & RENOVATION

GS DISCRETIONARY REPAIR AND RENOVATION LONG-RANGE SUMMARY **13F**

1. **SUMMARY FOR FISCAL YEAR** 1987
   SUMMARY DATE: 3/14/85

2. **INSTITUTION OR AGENCY**
   MISSISSIPPI UNIVERSITY FOR WOMEN

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*		*Amount*
1	Asbestos Abatement	$	100,000
2	1987 Roof Repairs	$	200,000
3	Campus Lighting Phase III	$	200,000
4	1987 Steam Line Repair	$	100,000
5	1987 Handicap Access	$	100,000
6	1987 Campus Painting	$	60,000
7		$	
8		$	
9		$	
10		$	
	TOTAL	$	760,000

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*		*Amount*
1	1988 Asbestos Abatement	$	100,000
2	1988 Roof Repairs	$	200,000
3	1988 Handicap Access	$	100,000

Priority No.	*Project Title*		*Amount*
4	Steam Line Extention	$	350,000
5	1988 Campus Painting	$	60,000
6		$	
7		$	
8		$	
9		$	
10		$	
	TOTAL	$	810,000

5. **FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):**

Priority No.	*Project Title*		*Amount*
1	Roof Repairs	$	400,000
2	Asbestos Abatement	$	300,000
3	Heating Plant Upgrade	$	300,000
4	Street Repairs	$	200,000
5	Handicap Access	$	300,000
6	Campus Painting	$	200,000
7	Buildings Demolition	$	150,000
8	Buildings Stabilization	$	300,000
9		$	
10		$	
11		$	
12		$	
13		$	
14		$	
15		$	

Priority No.	*Project Title*		*Amount*
16		$	
17		$	
18		$	
19		$	
20		$	
21		$	
22		$	
23		$	
24		$	
25		$	
	TOTAL	$	2,050,000

PRE-PLANNING

GS PRE-PLANNING LONG-RANGE SUMMARY **13D**

1. **SUMMARY FOR FISCAL YEAR 86**
   SUMMARY DATE: 3/18/85

2. **INSTITUTION OR AGENCY**
   MISSISSIPPI STATE UNIVERSITY

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*		*Amount*
1	Indoor Swimming Pool	$	4,200,000
2	Horticulture Greenhouses	$	850,000
3		$	
4		$	
5		$	
6		$	
7		$	
8		$	
9		$	
10		$	
	TOTAL	$	5,050,000

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*		*Amount*
1	McCarthy HPER Addition	$	5,500,000
2	Mitchell Library Addition	$	10,000,000
3		$	

Priority No.	*Project Title*	*Amount*
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 15,500,000

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*	*Amount*
1	Bowen Hall Mechanical & General Renovation	$ 2,500,000
2	Colvard Union Annex	$ 3,000,000
3	Meridian Branch Classroom/ Administration	$ 2,200,000
4	Academic/Library Storage Building	$ 750,000
5		$
6		$
7		$
8		$
9		$
10		$
11		$
12		$

Priority No.	*Project Title*	*Amount*
13		$
14		$
15		$
16		$
17		$
18		$
19		$
20		$
21		$
22		$
23		$
24		$
25		$
	TOTAL	$ 8,450,000

CAPITAL IMPROVEMENT

GS CAPITAL IMPROVEMENT LONG-RANGE SUMMARY 13E

1. **SUMMARY FOR FISCAL YEAR 86**
   SUMMARY DATE: 3/18/85

2. **INSTITUTION OR AGENCY**
   MISSISSIPPI STATE UNIVERSITY

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Creative Arts Theatre Equipment	$ 1,700,000
2	McCain Engineering Renovation	$ 4,800,000
3	Agricultural Mechanics Laboratory	$ 1,990,000
4	Water Storage Tank	$ 1,100,000
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 9,590,000

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Indoor Swimming Pool	$ 4,200,000

Priority No.	*Project Title*	*Amount*
2	Hilburn Hall Renovation	$ 2,200,000*
3	Horticulture Greenhouses	$ 850,000
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 7,250,000

5. **FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):**

Priority No.	*Project Title*	*Amount*
1	Cafeteria Restoration – Kitchen & HVAC	$ 5,500,000
2	McCarthy HPER Addition	$ 5,500,000
3	Mitchell Library Addition	$ 10,000,000
4	Music and Art Center	$ 8,300,000
5	Lee Hall Renovation	$ 4,500,000
6	Bowen Hall Mechanical & General Renovation	$ 2,500,000
7	Colvard Union Annex	$ 3,000,000
8	Meridian Branch Classroom/ Administration	$ 2,200,000

*This second installment of funding for this project brings the total funding to $3,000,000.

Priority No.	Project Title	Amount
9	Academic/Library Storage Building	$ 2,000,000
10		$
11		$
12		$
13		$
14		$
15		$
16		$
17		$
18		$
19		$
20		$
21		$
22		$
23		$
24		$
25		$
	TOTAL	$ 42,250,000

REPAIR & RENOVATION

GS DISCRETIONARY REPAIR AND RENOVATION LONG-RANGE SUMMARY **13F**

1. **SUMMARY FOR FISCAL YEAR 86**
   SUMMARY DATE: 3/18/85

2. **INSTITUTION OR AGENCY**
   MISSISSIPPI STATE UNIVERSITY

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No	Project Title	Amount
1	McCain Renovation – Phase I – Safety	$ 350,000
2	Hand Lab Asbestos Removal	$ 120,000
3	Patterson Lab Electrical Improvements	$ 125,000
4	Waterproofing & Repairs – Lee Hall, Library, Coliseum, Memorial	$ 180,000
5	Roof Replacements – Lakeside & Carpenter	$ 80,000
6	Lakeside Building Renovation	$ 50,000
7	Patterson Research & Instructional Labs	$ 100,000
8	Street Renovation – Hardy & Lee	$ 350,000
9	Coliseum Concrete Repairs	$ 65,000
10	Boiler for Steam Plant	$ 250,000
11	McCarthy Gym Improvements	$ 125,000
12	Vehicle Maint/Furniture & Upholstery Shops	$ 65,000
	TOTAL	$ 1,860,000

4. INTERMEDIATE NEEDS (should be funded in the next fiscal year):

Priority No.	*Project Title*	*Amount*
1	McCain Renovation – Phase II – HVAC & Electrical	$ 1,500,000
2	Hamlin Hall Asbestos Removal	$ 380,000
3	Rifle Range Safety Renovations	$ 60,000
4	Roof Replacement – McCarthy Gym	$ 150,000
5	Emergency Lighting 8 Bldgs/ Fire Alarms 10 Bldgs	$ 190,000
6	Lloyd-Ricks Renovation for Home Economics	$ 462,000
7	Utilities – Steam/Chilled Water Tunnel	$ 500,000
8	ROTC Building Renovation	$ 90,000
9	Streets and Parking Improvements	$ 500,000
10	Humphrey Coliseum Parking – Phase I	$ 250,000
	TOTAL	$ 4,082,000

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*	*Amount*
1	McCain Renovation – Phase III	$ 2,950,000
2	Street Lighting Renovation	$ 75,000
3	Fire Alarms for 7 Buildings	$ 35,000
4	Renovate Hardy for Security	$ 80,000

Priority No.	*Project Title*	*Amount*
5	Parking Lot Repairs – Dorman Hall	$ 45,000
6	George Hall Repairs and Improvements	$ 400,000
7	Renovate Stone for Athletic Department	$ 80,000
8	Humphrey Coliseum Parking – Phase II	$ 250,000
9	Walker Engineering Elevator Renovation	$ 80,000
10	McCarthy Gym – Pave Parking Lot	$ 107,000
11	Tennis Court Repairs & Lighting Improvement	$ 124,000
12	Bowen Hall Electrical Renovation	$ 75,000
13	Energy Refit – Dorman, Allen, Library	$ 200,000
14	Connection of Heating & Cooling Systems	$ 300,000
15	Storm Drainage – Bookstore to Dorman	$ 150,000
16	Magruder Street Renovation	$ 125,000
17	Raspect Flight Lab Repairs	$ 35,000
18	Freeman Hall Renovations	$ 65,000
19	Storm Drainage – Five Points	$ 20,000
20	Stone Boulevard Extended Paving	$ 150,000
21	Intramural Field Lighting	$ 75,000

Priority No.	*Project Title*	*Amount*
22	Memorial Hall Mechanical Renovation	$ 300,000
23	Walker Engineering – Asbestos Removal	$ 300,000
24	Renovation of Dorman Hall Auditorium	$ 25,000
25	Utilities – Steam/Chilled Water Tunnel	$ 500,000
26	Harned Annex HVAC Improvements	$ 60,000
27	Asbestos Removal	$ 5,000,000
28		$
29		$
30		$
31		$
32		$
33		$
34		$
35		$
36		$
37		$
38		$
39		$
40		$
41		$
42		$
43		$
44		$
45		$

Priority No.	*Project Title*	*Amount*
46		$
47		$
48		$
49		$
50		$
	TOTAL	$ 17,548,000

PRE-PLANNING

GS PRE-PLANNING LONG-RANGE SUMMARY 13D

1. **SUMMARY FOR FISCAL YEAR 1986.**
   SUMMARY DATE: March 23, 1985

2. **INSTITUTION OR AGENCY**
   MISS. VALLEY STATE UNIV.

3. **CURRENT NEEDS (should be funded in the coming year):**

Priority No.	*Project Title*	*Amount*
1		$
2		$
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Phase 3, Campus Face Lifting	$ 3,545,193
2		$
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 3,545,193

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*		*Amount*
1	Humanities and Performing Arts	$	4,435,198
2		$	
3		$	
4		$	
5		$	
6		$	
7		$	
8		$	
9		$	
10		$	
11		$	
12		$	
13		$	
14		$	
15		$	
16		$	
17		$	

Priority No.	*Project Title*		*Amount*
18		$	
19		$	
20		$	
21		$	
22		$	
23		$	
24		$	
25		$	
	TOTAL	$	4,435,198

CAPITAL IMPROVEMENT

GS CAPITAL IMPROVEMENT LONG-RANGE SUMMARY 13E

1. **SUMMARY FOR FISCAL YEAR 1986.**
   SUMMARY DATE: March 29, 1985

2. **INSTITUTION OR AGENCY**
   MISS. VALLEY STATE UNIV.

3. **CURRENT NEEDS (should be funded in the coming year):**

Priority No.	*Project Title*	*Amount*
1	Laundry Facility, Furniture & Equipment	$ 250,652
2	Renovation of Maintenance Building	$ 572,00
3	Dormitory for Men	$ 2,500,000
4	Administration Building	$ 1,651,704
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 4,974,436

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*	*Amount*
1		$
2		$
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$

REPAIR & RENOVATION

GS DISCRETIONARY REPAIR AND RENOVATION
LONG-RANGE SUMMARY 13F

1. **SUMMARY FOR FISCAL YEAR 1986.**
   SUMMARY DATE: March 29, 1985

2. **INSTITUTION OR AGENCY**
   MISS. VALLEY STATE UNIV.

3. **CURRENT NEEDS (should be funded in the coming year):**

Priority No.	*Project Title*		*Amount*
1	Replace Roof on Social Science Building	$	122,126
2	Replace 100 Ton Airtemp Chiller-Tech. Ed. Bldg.	$	41,995
3	Repairs to Seven Dormitories	$	488,792
4	Repairs to Student Health Center	$	14,470
5	Install Area Lighting on Campus	$	240,000
6	Repairs to F.L. Wright Math & Science Bldg.	$	75,540
7		$	
8		$	
9		$	
10		$	
	TOTAL	$	728,453

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*		*Amount*
1	Renovation of Pre-School Building	$	149,090
2	Repairs to Cafeteria	$	23,369
3	Repairs to Health & Physical Education Bldg.	$	17,319
4	Repairs to Education Building	$	8,501
5	Addition of Ramps for the Handicap	$	43,120
6	Repairs to Campus Chapel	$	50,646
7	Renovate ROTC & Security Buiding	$	165,324
8	Repairs to Communication Building	$	407,557
9		$	
10		$	
	TOTAL$		865,126

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*	*Amount*
1	Repairs to Walter Sillers Fine Arts Building	$ 438,159
2	Repairs to Technical Education Building	$ 41,568
3	Repairs to Recreation Building	$ 37,894
4	Replace Campus Entrance	$ 102,722
5	Repairs and Addition to President's Home	$ 148,185
6	Repairs to Delta Sand	$ 31,610
7	Repairs to Administration Annex I	$ 6,489
8	Repairs to Greenhouse & Biology Lab.	$ 53,750
9	Repairs to Student Union Building	$ 6,579
10	Repairs to Campus Walkways & Drives	$ 108,199
11		$
12		$
13		$
14		$
15		$
16		$
17		$
18		$
19		$
20		$

Priority No.	*Project Title*	*Amount*
21		$
22		$
23		$
24		$
25		$
	TOTAL	$ 975,157

REPAIR & RENOVATION

GS DISCRETIONARY REPAIR AND RENOVATION LONG-RANGE SUMMARY **13F**

1. **SUMMARY FOR FISCAL YEAR 1986**
   SUMMARY DATE: March, 1985

2. **INSTITUTION OR AGENCY**
   THE UNIVERSITY OF MISSISSIPPI

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*		*Amount*
1	Fire Alarms in Dorms, Phase II	$	377,824
2	Fire Alarms-Academic Buildings	$	56,375
3	Roofing Program 1985-1986	$	456,275
4	Water System Phase II	$	499,000
5	North Substation Renovation	$	302,940
6	Classroom Renovation	$	132,000
7	Brown Hall Fire Stairs	$	51,150
8	Renovation-Language Laboratory	$	125,000
9	Handicap Access-Coliseum	$	52,300
10	Energy Conservation – Peabody	$	85,000
	TOTAL	$	2,137,864

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*		*Amount*
1	E. M. S. Expansion – Phase II	$	1,770,000
2	Fire Alarms in Dorms – Phase III	$	177,500

Priority No.	*Project Title*		*Amount*
3	Speech/Hearing Clinic-Renov.	$	40,000
4	Water System Phase III	$	484,000
5	Painting Academic Buildings	$	17,600
6	Retrofit HVAC Systems	$	370,000
7	Law Library Level II	$	750,000
8	Renovate George Hall	$	325,000
9	Stage Curtains – Ed. Auditorium	$	12,500
10	Library Addition	$	522,500
	TOTAL	$	4,469,100

5. **FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):**

Priority No.	*Project Title*		*Amount*
1	Classroom Seating	$	26,400
2	Renovate Public Relations	$	14,522
3	Renovate Third Floor of Lyceum	$	450,000
4	Stadium Restroom	$	106,645
5	Cooling System for Bondurant	$	354,000
6	Cooling System – Physics Bldg.	$	201,000
7	UPD Office Renovation	$	15,000
8	A/C System – Improve Efficiency	$	596,000
9	Fulton Chapel Sound Reflector	$	24,690
10	Electrical Power Substation	$	748,440
11	Ed. Building Improvements	$	113,025

Priority No.	Project Title		Amount
12	Hot Water Piping in Tunnel	$	151,775
13	CRC Control Room Renovation	$	90,000
14	Honors Center Renovation	$	150,000
15	CRC Offices – Second Level	$	27,000
16	Education Bldg. – Air Cond.	$	225,000
17	Storm Sewer Imps. – Phase I	$	60,575
18	Int. Painting – Academic Bldgs.	$	166,900
19	Handicap Access – Campus Wide	$	1,350,000
20	Alumni House Renovation	$	105,000
21	Fire Alarms Phase IV	$	87,500
22	Renovate Labs – Chem. & Civil Eng.	$	22,000
23	Lab Renovation – Mech. Engr.	$	150,000
24	Pressbox Renovation	$	397,100
25	Complete Band/Intramural Field	$	156,493
26	CRC – Film Processing Room	$	14,000
27	Storm Sewer Imp. – Phase II	$	53,350
28	Engr. Science Renovation	$	13,000
29	Asphaltic Overlay Phase I	$	165,081
30	Meek Hall Fire Stairs	$	86,800
31	Addl. Parking – Science Center	$	51,950
32	Seismic Station Renovation	$	50,000
33	Entrance/Access – Faser	$	168,950
34	Hume/Biology Emergency Power	$	42,200
35	Visitor Center	$	75,000
36	Additional Parking – Phase I	$	299,300

Priority No.	Project Title		Amount
37	HVAC Modifications & Imps.	$	291,000
38	Asphaltic Overlay Phase II	$	208,730
39	McCain Hall Renovation	$	58,300
40	Structural Bldg. Retrofit	$	341,000
41	Renovation – Purchasing	$	63,250
42	Acoustic Panels – Computer Cntr.	$	10,000
43	Walkway – Civil Engineering	$	10,000
44	Johnson Commons A/C Replacement	$	48,438
45	Renovate Old Education	$	1,004,330
46	Paint Coliseum Ceiling	$	66,500
47	Ongoing Dormitory Renovation	$	425,000
48	Home Ec – Replace Freezer/ Refrig.	$	18,000
49	Parking Expansion – Stewart	$	114,418
50	Law Center Landscaping	$	50,875
51	New Cooling System for Lyceum	$	354,000
52	Replace Water Pipe in Dorms	$	239,400
53	Traffic Exit – Fraternity Row	$	159,800
54	Overlay – Coliseum Parking Lot	$	63,800
55	Overlay – East Lot of Coliseum	$	37,400
56	Handicap (Intra. – Bldg. Access)	$	45,100
57	Repair/Seal Showers in Dorms	$	102,100
58	Sidewalks – Central Campus	$	24,910
59	Sidewalks – New P. E. Center	$	26,975
60	Steam System Imp. in Bldgs.	$	68,000

Priority No.	Project Title		Amount
61	WWTP – Water Line	$	47,152
62	Univ. Golf Course Water System	$	257,418
63	Cooling System – Fine Arts Bldg.	$	295,000
64	Biology Room Modifications	$	17,450
65	Landscaping Turner HPER Bldg.	$	41,260
66	Expand A. A. Office	$	644,000
67	Replace A/C – Education Building	$	128,000
68	Repairs to Academic Buildings	$	88,000
69	Ren. Vaught-Hemingway Stadium	$	990,000
70	Install Fan Coil Units – Miller	$	29,625
71	Meek Equipment Room Floor	$	70,000
72	Exhaust Fans – Faser	$	161,050
73	Parking for Coulter Hall	$	107,000
74	Handicap Renovation FAC	$	229,000
75	Veneer Brick on Crosby Hall	$	354,000
	TOTAL	$	14,098,977

PRE-PLANNING

GS PRE-PLANNING LONG-RANGE SUMMARY **13D**

1. **SUMMARY FOR FISCAL YEAR 1987**
   SUMMARY DATE: March, 1985

2. **INSTITUTION OR AGENCY**
   THE UNIVERSITY OF MISSISSIPPI

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	Project Title		Amount
1	Library Expansion	$	7,000,000
2	Pharmacy Research Wing	$	8,264,700
3	Business School Addition	$	3,290,000
4	Barnard Restoration	$	2,400,000
5	Asbestos Hazard Removal	$	2,490,000
6	Law Library Level II	$	750,000
7	Performing Arts Center	$	10,414,880
8	High Technology Building	$	12,000,000
9	Student Health Service	$	2,480,000
10	Science Center – Phase V	$	5,639,600
	TOTAL	$	54,729,180

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	Project Title		Amount
1	Communications/Media Building	$	4,870,000
2	"Y" Building Restoration	$	3,305,000
3	Baseball Field and Stadium	$	1,479,500

Priority No.	*Project Title*	*Amount*
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 9,654,500

CAPITAL IMPROVEMENT

GS CAPITAL IMPROVEMENT LONG-RANGE SUMMARY 13E

1. **SUMMARY FOR FISCAL YEAR 1987**
   SUMMARY DATE: March, 1985

2. **INSTITUTION OR AGENCY**
   THE UNIVERSITY OF MISSISSIPPI

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Power Plant – Utilities System	$ 12,000,000
2	Renovation – Old Gym	$ 3,995,000
3	Renovation – Old Chemistry	$ 2,973,000
4	Lyceum Restoration	$ 4,000,000
5	Electrical Power Substation	$ 712,656
6	Pressbox Renovation	$ 397,100
7	Old Geology Restoration	$ 750,000
8	Handicap Access – Campus Wide	$ 1,350,000
9	Renovate Old Education	$ 1,004,330
10	Bishop Hall Renovation	$ 450,800
	TOTAL	$ 27,632,886

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Bondurant Hall Renovation	$ 1,603,210
2	Central Storage Building	$ 5,000,000
3	Parking Lot – Law Center	$ 840,780

Priority No.	*Project Title*	*Amount*
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 7,443,990

REPAIR & RENOVATION

GS DISCRETIONARY REPAIR AND RENOVATION LONG-RANGE SUMMARY **13F**

1. **SUMMARY FOR FISCAL YEAR 1986**
   SUMMARY DATE: March, 1985

2. **INSTITUTION OR AGENCY**
   THE UNIVERSITY OF MISSISSIPPI

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*	*Amount*
1	Fire Alarms in Dorms, Phase II	$ 377,824
2	Fire Alarms – Academic Buildings	$ 56,375
3	Roofing Program 1985-1986	$ 456,275
4	Water System Phase II	$ 499,000
5	North Substation Renovation	$ 302,940
6	Classroom Renovation	$ 132,000
7	Brown Hall Fire Stairs	$ 51,150
8	Renovation – Language Laboratory	$ 125,000
9	Handicap Access – Coliseum	$ 52,300
10	Energy Conservation – Peabody	$ 85,000
	TOTAL	$ 2,137,864

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*	*Amount*
1	E. M. S. Expansion – Phase II	$ 1,770,000
2	Fire Alarms in Dorms – Phase III	$ 177,500

Priority No.	*Project Title*		*Amount*
3	Fire Alarms in Dorms – Phase III	$	40,000
4	Water System Phase II	$	484,000
5	Painting Academic Buildings	$	17,600
6	Retrofit HVAC Systems	$	370,000
7	Law Library Level II	$	750,000
8	Renovate George Hall	$	325,000
9	Stage Curtains – Ed. Auditorium	$	12,500
10	Library Addition	$	522,500
	TOTAL	$	4,469,100

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*		*Amount*
1	Classroom Seating	$	26,400
2	Renovate Public Relations	$	14,522
3	Renovate Third Floor of Lyceum	$	450,000
4	Stadium Restroom	$	106,645
5	Cooling System for Bondurant	$	354,000
6	Cooling System – Physics Bldg.	$	201,000
7	UPD Office Renovation	$	15,000
8	A/C System – Improve Efficiency	$	596,000
9	Fulton Chapel Sound Reflector	$	24,690
10	Electrical Power Substation	$	748,440
11	Ed. Building Improvements	$	113,025

Priority No.	*Project Title*		*Amount*
12	Hot Water Piping in Tunnel	$	151,775
13	CRC Control Room Renovation	$	90,000
14	Honors Center Renovation	$	150,000
15	CRC Offices – Second Level	$	27,000
16	Education Bldg. – Air Cond.	$	225,000
17	Storm Sewer Imps. – Phase I	$	60,575
18	Int. Painting – Academic Bldgs.	$	166,900
19	Handicap Access – Campus Wide	$	1,350,000
20	Alumni House Renovation	$	105,000
21	Fire Alarms Phase IV	$	87,500
22	Renovate Labs – Chem. & Civil Eng.	$	22,000
23	Lab Renovation – Mech. Engr.	$	150,000
24	Pressbox Renovation	$	397,100
25	Complete Band/Intramural Field	$	156,493
26	CRC – Film Processing Room	$	14,000
27	Storm Sewer Imp. – Phase II	$	53,350
28	Engr. Science Renovation	$	13,000
29	Asphaltic Overlay Phase I	$	165,081
30	Meek Hall Fire Stairs	$	86,800
31	Addl. Parking – Science Center	$	51,950
32	Seismic Station Renovation	$	50,000
33	Entrance/Access – Faser	$	168,950
34	Hume/Biology Emergency Power	$	42,200
35	Visitor Center	$	75,000
36	Additional Parking – Phase I	$	299,300

Priority No.	Project Title	Amount
37	HVAC Modifications & Imps.	$ 291,000
38	Asphaltic Overlay Phase II	$ 208,730
39	McCain Hall Renovation	$ 58,300
40	Structural Bldg. Retrofit	$ 341,000
41	Renovation – Purchasing	$ 63,250
42	Acoustic Panels – Computer Cntr.	$ 10,000
43	Walkway – Civil Engineering	$ 10,000
44	Johnson Commons A/C Replacement	$ 48,438
45	Renovate Old Education	$ 1,004,330
46	Paint Coliseum Ceiling	$ 66,500
47	Ongoing Dormitory Renovation	$ 425,000
48	Home Ec – Replace Freezer/ Refrig.	$ 18,000
49	Parking Expansion – Stewart	$ 114,418
50	Law Center Landscaping	$ 50,875
51	New Cooling System for Lyceum	$ 354,000
52	Replace Water Pipe in Dorms	$ 239,400
53	Traffic Exit – Fraternity Row	$ 159,800
54	Overlay – Coliseum Parking Lot	$ 63,800
55	Overlay – East Lot of Coliseum	$ 37,400
56	Handicap (Intra. – Bldg. Access)	$ 45,100
57	Repair/Seal Showers in Dorms	$ 102,100
58	Sidewalks – Central Campus	$ 24,910
59	Sidewalks – New P. E. Center	$ 26,975
60	Steam System Imp. in Bldgs.	$ 68,000
61	WWTP – Water Line	$ 47,152

Priority No.	Project Title	Amount
62	Univ. Golf Course Water System	$ 257,418
63	Cooling System – Fine Arts Bldg.	$ 295,000
64	Biology Room Modifications	$ 17,450
65	Landscaping Turner HPER Bldg.	$ 41,260
66	Expand A. A. Office	$ 644,000
67	Replace A/C – Education Building	$ 128,000
68	Repairs to Academic Buildings	$ 88,000
69	Ren. Vaught-Hemingway Stadium	$ 990,000
70	Install Fan Coil Units – Miller	$ 29,625
71	Meek Equipment Room Floor	$ 70,000
72	Exhaust Fans – Faser	$ 161,050
73	Parking for Coulter Hall	$ 107,000
74	Handicap Renovation FAC	$ 229,000
75	Veneer Brick on Crosby Hall	$ 354,000
	TOTAL	$ 14,098,977

PRE-PLANNING

GS PRE-PLANNING LONG-RANGE SUMMARY 13D

1. **SUMMARY FOR FISCAL YEAR 1987**
   SUMMARY DATE: 2/14/85

2. **INSTITUTION OR AGENCY**
   UNIVERSITY OF SOUTHERN MISSISSIPPI

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*		*Amount*
1	Cook Library Addition	$	20,000,000
2		$	
3		$	
4		$	
5		$	
6		$	
7		$	
8		$	
9		$	
10		$	
	TOTAL	$	20,000,000

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*		*Amount*
1	Computer Science Facility	$	19,000,000
2		$	
3		$	

Priority No.	*Project Title*		*Amount*
4		$	
5		$	
6		$	
7		$	
8		$	
9		$	
10		$	
	TOTAL	$	19,000,000

5. **FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):**

Priority No.	*Project Title*		*Amount*
1	All-Purpose Classroom/ Laboratory/Office Complex	$	6,000,000
2	Educational Facility for Communication	$	11,000,000
3	Continuing Education Center	$	8,000,000
4	Greenhouse-Walker Science Area	$	276,750
5	Business Administration Building Addition	$	2,500,000
6		$	
7		$	
8		$	
9		$	
10		$	

Priority No.	*Project Title*	*Amount*
11		$
12		$
13		$
14		$
15		$
16		$
17		$
18		$
19		$
20		$
21		$
22		$
23		$
24		$
25		$
	TOTAL	$ 27,776,750

UNIVERSITY OF SOUTHERN MISSISSIPPI
PROJECT REQUESTS
FY 1986

	Page	Estimate
B. CAPITAL IMPROVEMENTS		
1. Health, Physical Education & Recreation Center and Track	4	$12,270,000
2. (a) Cook Library Addition	6	$20,000,000
(b) Computer Science Facility	7	$19,000,000
3. All-Purpose Classroom/Laboratory/Office Complex	9	$ 6,000,000
4. Educational Facility for Communication	10	$11,000,000
5. Continuing Education Center	11	$ 8,000,000
6. Greenhouse-Walker Science Area..	13	$ 276,750
7. Business Administration Building Addition	14	$ 2,500,000
TOTAL CAPITAL IMPROVEMENTS		$79,046,750

CAPITAL IMPROVEMENT

GS CAPITAL IMPROVEMENT LONG-RANGE SUMMARY 13E

1. SUMMARY FOR FISCAL YEAR 1987
SUMMARY DATE: 2/14/85

2. INSTITUTION OR AGENCY
UNIVERSITY OF SOUTHERN MISSISSIPPI

3. CURRENT NEEDS (should be funded in the coming fiscal year):

Priority No.	*Project Title*	*Amount*
1	Health, Physical Education & Recreation Center & Track	$ 12,270,000
2		$
3		$
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 12,270,000

4. INTERMEDIATE NEEDS (should be funded in the next fiscal year):

Priority No.	*Project Title*	*Amount*
1	Cook Library Addition	$ 20,000,000
2		$
3		$

Priority No.	*Project Title*	*Amount*
4		$
5		$
6		$
7		$
8		$
9		$
10		$
	TOTAL	$ 20,000,000

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*	*Amount*
1	Computer Science Facility	$ 19,000,000
2	All-Purpose Classroom/ Laboratory/Office Complex	$ 6,000,000
3	Educational Facility for Communication	$ 11,000,000
4	Continuing Education Center	$ 8,000,000
5	Greenhouse-Walker Science Area	$ 276,750
6	Business Administration Building Addition	$ 2,500,000
7		$
8		$
9		$
10		$

Priority No.	*Project Title*		*Amount*
11		$	
12		$	
13		$	
14		$	
15		$	
16		$	
17		$	
18		$	
19		$	
20		$	
21		$	
22		$	
23		$	
24		$	
25		$	
	TOTAL	$	46,776,750

REPAIR & RENOVATION

GS DISCRETIONARY REPAIR AND RENOVATION LONG-RANGE SUMMARY 13F

1. **SUMMARY FOR FISCAL YEAR** 1986
   SUMMARY DATE: 2/14/85

2. **INSTITUTION OR AGENCY**
   UNIVERSITY OF SOUTHERN MISSISSIPPI

3. **CURRENT NEEDS (should be funded in the coming fiscal year):**

Priority No.	*Project Title*		*Amount*
1	Asbestos Abatement – Phase I	$	74,550
2	Renov.-Choral/Band Hall-PAC	$	110,110
3	Renovation-Educ. & Psy. Bldg-Psycholoy Lab.	$	287,800
4	Natatorium-Floor & Foundation	$	215,165
5	1985 Roofing Prog.-Phase I	$	396,000
6	Renovation-Home Ec.-Phase II	$	551,800
7	Renovation-Sci. Lab.-Phase I	$	427,650
8	Renovation-Sci. Lab.-Phase II	$	321,435
9	Resurfacing Streets & Parking	$	200,000
10	Tennis Court Improvements	$	61,780
	TOTAL	$	2,646,290

4. **INTERMEDIATE NEEDS (should be funded in the next fiscal year):**

Priority No.	*Project Title*		*Amount*
1	Fire Alarm/Emerg. Power-Dorms-Phase III	$	360,000
2	Security Lighting-Phase III	$	302,000
3	Repl. of Cool. Twrs & Chiller	$	300,000

Priority No.	*Project Title*		*Amount*
4	Renovation-Southern Hall	$	384,000
5	Interior Lighting	$	214,710
6	HVAC Loop-Sci. & Tech. Bldg.	$	551,800
7	Renovation-Wesley Building	$	113,050
8	Floor Replacement	$	109,250
9	Cook Library-Faculty Offices	$	56,525
10	Campus Utility Expansion	$	203,745
	TOTAL	$	2,595,080

5. FUTURE NEEDS (should be funded in the next 3 to 5 fiscal years):

Priority No.	*Project Title*		*Amount*
1	Heat Syst-Indus. Arts, ROTC & Weathersby	$	73,230
2	1985 Roof Program-Phase II	$	256,000
3	Asbestos Abatement-Phase II	$	1,295,900
4	Phase IV-Handicap Access.	$	193,150
5	Renovation-Southern Playhouse	$	106,000
6	Reloc. Kilns-George Hurst Bldg.	$	66,630
7	Repl. A/C-McClesky & McMillan Halls	$	214,560
8	Entrance-Fine Arts Complex	$	210,375
9	Int. Renovation-HPER Facil.	$	605,440
10	McLemore Hall-Cont. Educ.	$	56,525
11	Renovation-Admin. Bldg.	$	449,900
12	Repl. Wood Windows & Doors	$	232,000
13	Fire Alarms/Emerg. Power-Dorms. Phase IV	$	346,120
14	Campus Elect. Metering-Phase I	$	46,310
15	Waterproofing of Buildings	$	443,960

Priority No.	*Project Title*		*Amount*
16	Fire Alarm Systems – Wood Structures	$	340,380
17	Renovation – Parking Areas	$	379,610
18	Coliseum – Sound System	$	50,900
19	Phase V – Electrical Dist.	$	451,575
20	Hub – HVAC System	$	386,950
21	Bennett Auditorium – HVAC	$	387,000
22	Underground Electrical Dist. System-Pinehaven	$	642,600
23	Renovation – Honor House	$	482,950
24	Renovation – Alumni House	$	393,990
25	Conversion HVAC – Bond Hall	$	326,210
26	Conversion HVAC – Panhellenic	$	315,210
27	Underground Electrical Dist. System – Elam Arms	$	129,015
28	Renovation of Elam Arms	$	479,075
29	Renovation of Vann Hall	$	175,690
30	Replace of Patio Door Units at Marsh & McLemore Halls	$	40,295
31	Interior Painting – Coliseum	$	231,200
32	College Hall Basement – Renovation for Anthropology	$	57,900
33	Asbestos Abatement – Phase III	$	1,520,400
	TOTAL	$	11,387,050

UNITED STATES' EXHIBIT 836a

TABLE 1

Mississippi Public Institutions of Higher Learning

Enrollment: 1953/54 (Actual), 1965 (Projected)

Expenditures: 1953/54-1965 Projected

Institution	Enrollment 1953/54 (Actual)	Enrollment 1965 (Projected)	Enrollment Difference	Total Expenditures 1953/54-1965 (Projected)	Expenditure/ FTE 1953/54-1965 (Projected)
Alcorn	541	800	259	$ 500,000	$ 1,930
Miss. Valley	185	700	515	1,700,000	3,300
Jackson State	784	2,000	1,216	5,000,000	4,111
Total TBIs	1,501	3,500	1,990	7,200,000	3,618
Delta State	423	600	177	2,000,000	11,299
Miss. State	2,451	3,500	1,049	9,000,000	8,579
M. U. Women	820	900	80	2,600,000	32,500
U. Miss.	2,197	3,000	803	9,000,000	11,208
U. So.Miss.	2,094	3,500	1,406	7,600,000	5,405
Total TWIs	7,985	11,500	3,515	30,200,000	$ 8,591
Total all IHL	9,495	15,000	5,505	$37,400,000	$ 6,794

Source: Brewton Report, 1954. p.256, Table 24; pp. 257-275.

UNITED STATES' EXHIBIT 836c

which steadily grew from 18% in 1953/54 to 25% in the 19?0's and declined to 22% in 1984/85.

TABLE 3

ENROLLMENTS: PEAKS AND 1984/85

	Peak Enrollment		1984/85
TBI's			
Alcorn State	(75/76)	2,790	2,199
Jackson State	(77/78)	6,875	5,205
Mississippi Valley State	(76/77)	3,072	2,280
TWI's			
Delta State	(83/84)	3,769	3,473
Mississippi State	(83/84)	11,256	10,685
Mississippi Univ. Women	(68/69)	2,601	1,573
U. of Mississippi	(78/79)	8,523	7,505
U. of So. Mississippi	(83/84)	10,778	10,686

The following are detailed descriptions of enrollments at each campus.

UNITED STATES' EXHIBIT 836e

TABLE 6

CAMPUS SPACE
(Gross Square Feet)

	1960/61	1964/65	% Inc	1969/70	% Inc	1974/75	% Inc	1979/80	% Inc	1984/85	% Inc	Increase 1960/61 1984/85
TBI'S												
Alcorn State	244,991	509,576	108.0%	818,378	60.6%	1,001,385	22.4%	1,235,159	23.3%	1,234,611	0.0%	989,620
Jackson State	262,022	582,969	122.5%	859,242	47.4%	999,664	16.3%	1,129,882	13.0%	1,372,587	21.5%	1,110,565
Miss. Valley State	309,483	582,359	88.2%	773,558	32.8%	1,139,942	47.4%	1,296,244	13.7%	1,324,007	2.1%	1,014,524
Subtotal TBI'S	816,496	1,674,904		2,451,178		3,140,991		3,661,285		3,931,205		3,114,709
TWI'S												
Delta State	408,369	571,059	39.8%	693,872	21.5%	852,968	22.9%	1,132,725	32.8%	1,090,575	- 3.7%	682,206
Mississippi State	1,729,176	2,964,093	71.4%	3,722,961	25.6%	3,940,355	5.8%	4,788,851	21.5%	5,017,758	4.8%	3,288,582
Miss. Univ Women	687,121	1,068,318	55.5%	1,329,811	24.5%	1,387,931	4.4%	1,544,132	11.3%	1,544,159	0.0%	857,038
Univ. of Miss.	1,805,734	2,305,025	27.7%	2,638,584	14.5%	2,840,161	7.6%	3,573,981	25.8%	3,741,360	4.7%	1,935,626
Univ. So. Miss.	962,953	2,102,083	118.3%	1,991,300	- 5.3%	2,122,591	6.6%	2,822,252	33.0%	2,849,091	1.0%	1,886,138
Subtotal TWI'S	5,593,353	9,010,578		10,376,528		11,144,006		13,861,941		14,242,943		8,649,590
TOTAL	6,409,849	10,685,482		12,827,706		14,284,997		17,523,226		18,174,148		11,764,299

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UNITED STATES' EXHIBIT 836f

TABLE 7

CAMPUS SPACE
(Net Assignable Square Feet)

	1969/70	1974/75	% Inc	1979/80	% Inc	1984/85	Increase 1969/70 % Inc	1984/85
TBI'S								
Alcorn State	585,729	878,408	50.0%	1,063,087	21.0%	1,011,925	- 4.8%	426,196
Jackson State	563,492	746,787	32.5%	960,874	28.7%	1,110,457	15.6%	546,965
Miss. Valley State	584,214	777,687	33.1%	912,318	17.3%	923,212	1.2%	338,998
Subtotal TBI'S	1,733,435	2,402,882		2,936,279		3,045,594		1,312,159
TWI'S								
Delta State	610,607	683,399	11.9%	900,383	31.8%	817,215	- 9.2%	206,608
Mississippi State	2,418,298	2,646,140	9.4%	2,777,780	5.0%	3,106,942	11.8%	688,644
Miss. Univ Women	900,225	941,805	4.6%	1,045,273	11.0%	1,045,273	0.0%	145,048
Univ. of Miss.	1,793,371	1,940,794	8.2%	2,262,304	16.6%	2,261,766	0.0%	468,395
Univ. So. Miss.	1,336,658	1,489,338	11.4%	1,778,132	19.4%	1,798,429	1.1%	461,771
Subtotal TWI'S	7,059,159	7,701,476		8,763,872		9,029,625		1,970,466
TOTAL	8,792,594	10,104,358		11,700,151		12,075,219		3,282,625

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UNITED STATES' EXHIBIT 836g

TABLE 8

GROSS SPACE PER FULL-TIME EQUIVALENT

	1960/61	1964/65	1969/70	1974/75	1979/80	1984/85
TBI'S						
Alcorn State	275.27	362.17	343.14	428.86	636.02	561.44
Jackson State	184.26	302.06	202.22	184.95	170.19	246.69
Mississippi Valley State	329.59	365.34	334.87	428.71	496.84	580.70
TBI Average GSF/FTE	263.04	343.19	293.41	347.51	434.35	462.95
TWI'S						
Delta State	444.36	384.03	284.26	320.79	439.04	314.02
Mississippi State	403.54	501.11	465.37	408.03	454.78	469.61
Mississippi Univ Women	466.48	445.69	545.90	584.39	782.63	981.66
Univ. of Mississippi	452.11	506.15	415.33	391.91	425.17	498.58
Univ. So. Mississippi	240.98	389.42	281.58	251.55	314.95	266.62
TWI Average GSF/FTE	401.49	445.28	398.49	391.33	483.31	506.10

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UNITED STATES' EXHIBIT 836h

TABLE 8A

GROSS SQUARE FEET PER FULLTIME EQUIVALENT STUDENT, FALL 1980
NET ASSIGNABLE SQUARE FEET PER FULLTIME EQUIVALENT STUDENT, FALL 1980
NET ASSIGNABLE SQUARE FEET PER HEGIS CATEGORY PER FULLTIME EQUIVALENT STUDENT, 1980

	Eight Campuses	Alcorn State	Delta State	Jackson* State	Miss.* State	Miss. Univ. for Women	Miss. Valley State	Univ.* of Miss.	Univ. of* So. Miss. Gulf Park
GSF/FTE Fall 1980	369.1	491.6(3)	430.0(4)	202.7(8)	408.8(5)	850.7(1)	494.8(2)	354.7(6)	281.6(7)
NASF/FTE Fall 1980	253.2	418.5(2)	338.9(4)	135.4(8)	279.0(5)	567.6(1)	352.3(3)	233.9(6)	175.9(7)
NASF/FTE Fall 1980 Excluding Residential	180.9	256.5(2)	252.3(3)	101.1(8)	210.9(5)	441.4(1)	246.3(4)	155.1(6)	123.6(7)
NASF/FTE by Category									
100 Class-room	19.5	20.3	29.6	24.3	15.5	34.3	56.4	11.7	13.5
200 Lab.	34.4	43.4	28.1	17.8	55.1	66.4	34.0	27.3	22.7
300 Office	29.3	35.8	26.0	14.3	42.5	48.6	29.8	26.7	22.8

600

TABLE 8A – Continued

GROSS SQUARE FEET PER FULLTIME EQUIVALENT STUDENT, FALL 1980
NET ASSIGNABLE SQUARE FEET PER FULLTIME EQUIVALENT STUDENT, FALL 1980
NET ASSIGNABLE SQUARE FEET PER HEGIS CATEGORY PER FULLTIME EQUIVALENT STUDENT, 1980

	Eight Campuses	Alcorn State	Delta State	Jackson* State	Miss.* State	Miss. Univ. for Women	Miss. Valley State	Univ.* of Miss.	Univ. of* So. Miss. Gulf Park
400 Study	12.4	22.0	13.4	10.6	8.6	20.6	10.0	14.7	12.1
500 Special	27.8	37.7	47.8	11.1	36.9	40.5	39.9	18.5	24.3
600 Gen'l	30.6	63.9	63.9	21.1	23.3	90.2	55.0	25.4	16.4
700 Supporting	16.1	31.3	20.0	1.4	19.0	26.5	17.4	20.4	11.3
800 Health Care	2.2	2.1	1.8	0.0	6.6	2.6	1.0	0.7	0.5
900 Residential	72.3	162.0	86.6	34.3	68.1	126.2	106.0	78.8	52.3
1000 Unclassified	8.6	0.0	21.7	0.5	3.4	111.7	2.8	9.7	0.0

* Doctorate and Post-Doctorate Institutions

Number in parentheses denotes ranking of the eight campuses.

D&A 5/81

UNITED STATES' EXHIBIT 836i

Analyses of space per capita requires an overview of patterns during the period 1960/61 to 1984/85 to understand the relationships between enrollment changes and plant additions and avoid distortions at a single year's relative position. However, campus space in 1980/81 is representative of enrollment relative to space for a mature system of eight campuses as a measure of the state's allocation of resources for facilities. The Dober & Associates study based on 1980/81 data provides comparisons of space per capita when enrollments were at or near peaks and only a relatively small proportion of space was later added to the campuses (Table 8a).

The 1980/81 ranking of NASF/FTE excluding residential space illustrates a wide range among IHL campuses (Table 9):

TABLE 9

Non-Residential Space – 1980/81

	NASF/FTE
Mississippi University for Women	441.4
Alcorn State	256.5
Delta State	253.3
Mississippi Valley	246.3
Mississippi State	210.9
University of Mississippi	155.1
University of So. Mississippi	123.6
Jackson State	101.1

Source: Dober & Associates, Inc. Capital Improvements Study, 1981. p. 3-8.

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TABLE 10

STUDENT RESIDENTIAL FACILITIES NUMBER OF BUILDINGS
STUDENT RESIDENTIAL FACILITIES NASF
ORIGINAL DESIGN CAPACITY – BEDS
FALL 1980 ASSIGNMENT – BEDS
PERCENTAGE ASSIGNED BEDS TO TOTAL FTE ENROLLMENT 1981
NUMBER OF OTHER RESIDENTIAL UNITS/NASF FEET OTHER RESIDENTIAL UNITS

	Eight Campuses	Alcorn State	Delta State	Jackson State	Miss. State	Miss. Univ. for Women	Miss. Valley State	Univ. of Miss.	Univ. of* So. Miss. Gulf Park
Number of Student Residential Bldgs. Presently in Use (Fall 1980)	92	8	10	5	17	6	11	22	13
NASF	2,776,418	330,270	196,493	196,314	626,130	171,658	229,820	597,862	427,871
Original Design Capacity – Beds	21,255	2,158	1,507	1,474	4,865	1,190	1,928	4,572	3,561
Assigned Beds – Fall 1980	20,697	1,900	1,361	2,145*	4,703	905	1,946	4,107	3,630
Percentage Assigned Beds to Design Capacity	97%	88%	90%	146%	97%	76%	101%	90%	102%
Percentage Assigned Beds to Total FTE Enrollment Fall 1980	47%	86%	53%	36%	45%	51%	80%	46%	39%

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TABLE 10 – Continued

STUDENT RESIDENTIAL FACILITIES NUMBER OF BUILDINGS
STUDENT RESIDENTIAL FACILITIES NASF
ORIGINAL DESIGN CAPACITY – BEDS
FALL 1980 ASSIGNMENT – BEDS
PERCENTAGE ASSIGNED BEDS TO TOTAL FTE ENROLLMENT 1981
NUMBER OF OTHER RESIDENTIAL UNITS/NASF FEET OTHER RESIDENTIAL UNITS

	Eight Campuses	Alcorn State	Delta State	Jackson* State	Miss.* State	Miss. Univ. for Women	Miss. Valley State	Univ.* of Miss.	Univ. of* So. Miss. Gulf Park
Number of Other Residential Units, Sleeping Quarters, Guest Rooms	1,647	71	84	45	298	40	120	480	509**
NASF of Other Residential Units	770,435	38,105	49,886	34,405	178,851	37,208	47,395	215,789	168,796
Residential NASF Now Vacant, Storage, Under Renovation	272,415	16,954	7,825	0	22,354	126,332	0	56,917	42,033

* Jackson State Rents 52 Rooms (104 beds) in a nearby Travelodge for a student dormitory and these beds are not included in this number.

** 212 Beds Gulf Park

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TABLE 11

SPACE PER FTE – RESEARCH UNIVERSITIES

	1960/61	1964/65	1969/70	1974/75	1979/80	1984/85
a. GSF/FTE						
Jackson State	184.26	362.17	202.22	184.95	170.19	246.69
TWI'S						
Mississippi State	403.54	501.11	465.37	408.03	454.78	469.61
Univ. of Mississippi	452.11	506.15	415.33	391.91	425.17	498.58
Univ. So. Mississippi	240.98	389.42	281.58	251.55	314.95	266.62
TWI's Average GSF/FTE	365.54	465.56	387.42	350.50	398.30	411.60
b. NASF/FTE						
Jackson State		0.00	132.62	138.17	144.73	199.58
TWI'S						
Mississippi State		0.00	302.29	274.01	263.80	290.78
Univ. of Mississippi		0.00	282.29	267.81	269.13	301.41
Univ. So. Mississippi		0.00	189.01	176.50	198.43	168.30
TWI's Average NASF/FTE		0.00	257.86	239.44	243.79	253.49

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UNITED STATES' EXHIBIT 836l

TABLE 12

PLANT INVESTMENT – BOOK VALUE

	1964/65	1969/70	% Inc.	1974/75	% Inc.	1979/80	% Inc.	1984/85	% Inc.	Increase 1964/65-1984/85
HBI's										
Alcorn State	$5,825,391	$13,264,688	127.7%	$17,191,666	29.6%	$23,507,789	36.7%	$28,571,886	21.5%	$22,746,495
Jackson State	$6,317,525	$13,063,383	106.8%	$22,986,582	76.0%	$28,593,894	24.4%	$39,841,880	39.3%	$33,524,355
Mississippi Valley State	$6,159,820	$10,106,766	64.1%	$18,478,860	82.8%	$21,097,241	14.2%	$20,940,869	-0.7%	$14,781,049
Subtotal HBI's	$18,302,736	$36,434,837		$58,657,108		$73,198,924		$89,354,635		$71,051,899
TWI'S										
Delta State	$6,122,498	$11,910,688	94.5%	$17,659,705	48.3%	$24,387,541	38.1%	$28,704,010	17.7%	$22,582,512
Mississippi State	$37,143,358	$54,294,398	46.2%	$75,967,861	39.9%	$87,084,050	14.6%	$107,404,296	23.3%	$70,260,938
Mississippi Univ Women	$11,375,822	$17,378,985	52.8%	$22,554,538	29.8%	$25,573,298	13.4%	$27,107,857	6.0%	$15,732,035
Univ. of Mississippi	$27,295,416	$41,843,920	53.3%	$53,793,153	28.6%	$62,946,258	17.0%	$72,365,781	15.0%	$45,070,365
Univ. So. Mississippi	$17,792,087	$24,837,396	39.6%	$27,376,726	10.2%	$37,377,651	36.5%	$52,192,020	39.6%	$34,399,933
Subtotal TWI's	$99,729,181	$150,265,387		$197,351,978		$237,368,790		$287,774,964		$188,045,783
TOTAL	118,031,917	186,700,244		256,009,086		310,567,714		377,129,599		259,097,682

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UNITED STATES' EXHIBIT 836m

TABLE 13

PLANT INVESTMENT – REPLACEMENT VALUE

	1964/65	1969/70	% Inc	1974/75	% Inc	1979/80	% Inc	1984/85	% Inc	Increase 1964/65-1984/85
TBI's										
Alcorn State	$10,701,096	$21,277,828	98.8%	$35,048,475	64.7%	$38,150,443	8.9%	$49,915,240	30.8%	$39,214,144
Jackson State	$12,242,349	$22,340,292	82.5%	$34,988,240	56.6%	$56,798,630	62.3%	$74,315,678	30.8%	$62,073,329
Mississippi Valley State	$12,229,539	$20,112,508	64.5%	$39,987,970	98.8%	$40,787,478	2.0%	$43,837,040	7.5%	$31,607,501
Subtotal TBI's	$35,172,984	$63,730,628		$110,024,685		$135,736,551		$168,067,958		$132,894,974
TWI'S										
Delta State	$11,992,239	$18,040,762	50.4%	$29,853,880	65.5%	$30,433,500	1.9%	$63,169,993	107.6%	$51,177,754
Mississippi State	$62,245,953	$96,796,986	55.5%	$137,912,250	42.5%	$246,904,315	79.0%	$305,721,970	23.8%	$243,476,017
Mississippi Univ Women	$22,434,678	$34,575,086	54.1%	$48,577,585	40.5%	$61,086,546	25.8%	$63,485,898	3.9%	$41,051,220
Univ of Mississippi	$48,405,525	$68,603,184	41.7%	$99,405,184	44.9%	$121,799,304	22.5%	$199,526,432	63.8%	$151,120,907
Univ So Mississippi	$44,143,743	$51,773,800	17.3%	$74,290,685	43.5%	$106,562,878	43.4%	$120,193,938	12.8%	$76,050,195
Subtotal TWI's	$189,222,138	$269,789,818		$390,040,035		$566,786,543		$752,098,231		$562,876,093
TOTAL	224,395,122	333,520,446		500,064,720		702,523,094		920,166,189		695,771,067

UNITED STATES' EXHIBIT 836n

TABLE 14

PLANT INVESTMENT – BOOK VALUE PER FTE

	1964/65	1969/70	1974/75	1979/80	1984/85
TBI's					
Alcorn State	$4,140	$5,562	$7,363	$12,105	$12,993
Jackson State	$3,273	$3,074	$4,253	$4,307	$7,161
Mississippi Valley State	$3,864	$4,375	$6,950	$8,086	$9,185
TBI Average	$3,759	$4,337	$6,188	$8,166	$9,779
TWI'S					
Delta State	$4,117	$4,879	$6,641	$9,453	$8,265
Mississippi State	$6,280	$6,787	$7,867	$8,270	$10,052
Mississippi Univ Women	$4,746	$7,134	$9,497	$12,962	$17,233
Univ. of Mississippi	$5,994	$6,586	$7,423	$7,488	$9,644
Univ. So. Mississippi	$3,296	$3,512	$3,244	$4,171	$4,884
TWI Average	$4,887	$5,780	$6,934	$8,469	$10,016

UNITED STATES' EXHIBIT 836o

TABLE 15

PLANT INVESTMENT – REPLACEMENT VALUE PER FTE

	1964/65	1969/70	1974/75	1979/80	1984/85
TBI's					
Alcorn State	$7,606	$8,922	$15,010	$19,645	$22,699
Jackson State	$6,343	$5,258	$6,473	$8,555	$13,357
Mississippi Valley State	$7,672	$8,707	$15,039	$15,633	$19,227
TBI Average	$7,207	$7,629	$12,174	$14,611	$18,427
TWI'S					
Delta State	$8,065	$7,391	$11,227	$11,796	$18,189
Mississippi State	$10,523	$12,100	$14,281	$23,448	$28,612
Mississippi Univ Women	$9,359	$14,193	$20,454	$30,961	$40,360
Univ. of Mississippi	$10,629	$10,799	$13,717	$14,490	$26,589
Univ. So. Mississippi	$8,178	$7,321	$8,804	$11,892	$11,248
TWI Average	$9,351	$10,361	$13,697	$18,517	$25,000

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TABLE 16

PLANT INVESTMENT – RESEARCH UNIVERSITIES VALUE PER FTE

	1964/65	1969/70	1974/75	1979/80	1984/85
a. Book Value/FTE					
TBI					
Jackson State	$3,273	$3,074	$4,253	$4,307	$7,161
TWI'S					
Mississippi State	$6,280	$6,787	$7,867	$8,270	$10,052
Univ. of Mississippi	$5,994	$6,586	$7,423	$7,488	$9,644
Univ. So. Mississippi	$3,296	$3,512	$3,244	$4,171	$4,884
TWI'S AVERAGE/FTE	$5,190	$5,628	$6,178	$6,643	$8,193
b. Replacement Value/FTE					
TBI					
Jackson State	$6,343	$5,258	$6,473	$8,555	$13,357
TWI'S					
Mississippi State	$10,523	$12,100	$14,281	$23,448	$28,612
Univ. of Mississippi	$10,629	$10,799	$13,717	$14,490	$26,589
Univ. So. Mississippi	$8,178	$7,321	$8,804	$11,892	$11,248
TWI'S AVERAGE/FTE	$9,777	$10,073	$12,267	$16,610	$22,150

UNITED STATES' EXHIBIT 836q

TABLE 17

PLANT INVESTMENT – EQUIPMENT PER FTE
1964/65, 1969/70, 1974/75, 1979/80

	1964/65	$/FTE	1969/70	$/FTE	1974/75	$/FTE	1979/80	$ FTE	Increase 1964/65-1979/80
TBI'S									
Alcorn State	$895,998	$637	$1,354,173	$568	$2,432,439	$1,042	$4,135,872	$2,130	$3,239,874
Mississippi Valley State	$437,526	$74	$1,526,444	$661	$1,836,825	$691	$2,886,964	$1,107	$2,449,438
Jackson State	$763,178	$395	$960,905	$226	$2,346,008	$434	$3,443,607	$519	$2,680,429
TBI'S Subtotal	$2,096,702		$3,841,522		$6,615,272		$10,466,443		$8,369,741
TWI'S									
Delta State	$822,182	$553	$1,212,501	$497	$1,794,201	$675	$6,368,442	$2,468	$5,546,260
Mississippi State	$6,045,169	$1,022	$9,520,294	$1,190	$17,395,362	$1,801	$29,087,006	$2,762	$23,041,837
Mississippi Univ. Women	$1,498,303	$625	$1,751,336	$719	$2,329,415	$981	$3,636,916	$1,843	$2,138,613
Univ. of Mississippi	$4,881,060	$1,072	$7,694,027	$1,211	$13,973,551	$1,928	$21,076,932	$2,507	$16,195,872
Univ. So. Mississippi	$2,970,892	$550	$5,569,007	$787	$11,535,432	$1,367	$19,162,351	$2,138	$16,191,459
TWI'S Subtotal	$16,217,606		$25,747,165		$47,027,961		$79,331,647		$63,114,041
TOTAL	$18,214,308		$29,588,687		$53,643,233		$89,798,090		$71,483,782

UNITED STATES' EXHIBIT 836r

TABLE 18

PLANT INVESTMENT – EQUIPMENT PER FTE
RESEARCH UNIVERSITIES

	1964/65	$ FTE	1969/70	$ FTE	1974/75	$/FTE	1979/80	$ FTE	Increase 1964/65-1979/80
TBI									
Jackson State	$763,178	$395	$960,905	$226	$2,346,008	$434	$3,443,607	$519	$2,680,429
TWI'S									
Mississippi State	$6,045,169	$1,022	$9,520,294	$1,190	$17,395,362	$1,801	$29,087,006	$2,762	$23,041,837
Univ. of Mississippi	$4,881,060	$1,072	$7,694,027	$1,211	$13,973,551	$1,928	$21,076,932	$2,507	$16,195,872
Univ. So. Mississippi	$2,970,892	$550	$5,569,007	$787	$11,535,432	$1,367	$19,162,351	$2,138	$16,191,459
TWI'S Average	$13,897,121		$22,783,328		$42,904,345		$69,326,289		$55,429,168

UNITED STATES' EXHIBIT 874

CHAPTER 2
ACT Score and High School Grade Norms

In this chapter, statistical summary tables are given for the ACT test scores and high school grades of various subgroups of enrolled 1984-85 freshmen. These subgroups are defined by the region, type, and control of the college at which the students enrolled and by the students' sex, age, race, family income, planned educational major, and possession of physical handicap. Some of the differences among subgroups in their average ACT test scores and high school grades are briefly described below.

Sex

Men students generally have higher average scores than women on the ACT mathematics, social studies, and natural sciences test but lower average scores than women on the English test. This is true not only for the total population of men and women but also for most subgroups. Nationally, men average 2.5 ACT score units higher than women on the mathematics test, 2.5 units higher on the natural sciences test, and 1.5 units higher on the social studies test. Nationally, women average about 1.2 units higher than men on the English test.

Men students generally have lower self-reported high school grades than do women in all four subject areas. With few exceptions, this is true of subgroups defined by region, control, and type of student. Nationally, men average .08 to .13 grade units lower\than women in mathematics, social studies, and natural sciences, and .33 grade units lower in English.

Age

Freshmen who were 17-19 years old when enrolled had significantly higher ACT scores in all four areas than older students. The average ACT Composite score of students 17-19 years old at matriculation is 19.2. For students 20-25, the average ACT Composite is 14.9; for students 26-35, it is 15.8; and for students 36 or older, it is 15.1.

A similar pattern is true of high school grades. The average high school average for students 17-19 years old at matriculation is 2.99. For students 20-25, it is 2.60; for students 26-35, it is 2.53, and for students 36 years or older, it is 2.61.

Family Income

All four ACT scores steadily increase, on the average, as family income increases. Mean scores for students with family incomes under $12,000 are 16.4 in English, 14.6 in mathematics, 15.2 in social studies, and 18.9 in natural sciences. Mean scores for students with family incomes above $24,000 are 19.5 in English, 19.5 in mathematics, 19.1 in social studies, and 22.7 in natural sciences. The average ACT scores for students who consider the family's income confidential are 18.4 in English, 17.7 in mathematics, 17.6 in social studies, and 21.4 in natural sciences.

High school grades also tend to increase with family income. Average English grades range from 2.93 for students with incomes under $12,000 to 3.09 for students in the highest income category. High school math grades increased from 2.73 for students in the lowest income category to 2.82 for students in the highest. Social studies grades vary from 3.03 to 3.20; natural sciences grades, from 2.86 to 2.99.

Racial-Ethnic Background

There are marked differences among the racial-ethnic groups in their average ACT scores. Students who identified themselves as Caucasian-American/White have the highest average scores, with an average Composite of 19.9. The next highest average scores are those of Asian-Americans, with an average Composite of 19.2. The average Composite score for students of Puerto Rican/Cuban/Hispanic Origin is 16.7; for American Indians/Alaskan Natives, it is 15.3; for Mexican-Americans/Chicanos, 14.6; and for Afro-Americans/Blacks, 13.0. Students with "Other" racial-ethnic backgrounds have an average Composite of 16.7. Those who chose not to identify their racial-ethnic background average 17.0. Within each racial-ethnic background, there is considerable variation among the four test scores.

Similar variation among racial-ethnic groups is apparent in the high school grades. Asian students have the highest average high school average, 3.17; whites, the next highest, 3.02. The average high school average for Chicanos is 2.84; for American Indians, 2.82; for Puerto Ricans/Cubans, 2.82, and for Blacks, 2.63. Within each racial-ethnic group, the average mathematics grade is the lowest and average social studies grade is the highest.

Handicapped Students

Norms are also presented for students who indicated in Item 8 of the Student Profile Section that they have a physical handicap or disability that may require special services or provisions from the college they attend. Of the 429,400 students in the enrolled Class Profile population, about 3,140 responded affirmatively to this item. It should be noted that some of these students might have handicaps that would have little influence on their ability to perform

on the test; therefore, the results may not be representative of persons with severe handicaps (e.g., blindness) that could affect their performance on the test.

ACT does administer special versions of the ACT Assessment (in Braille, large type, and audio media) to students who require them. Norms for these specially-tested students were reported by Laing and Farmer (1984).[2]

The average ACT Composite scores of students who identified themselves as handicapped on the Student Profile Section are about 2.4 units lower than those of the general population. The self-reported high school grades are also somewhat lower for handicapped students by about .17 grade units.

College Type and Control

ACT scores of students enrolled in 2-year colleges average 15.8 in English, 13.3 in mathematics, 14.4 in social studies, 18.4 in natural sciences, and 15.6 on the Composite. Freshmen in private 2-year colleges have somewhat higher ACT scores than freshmen in public 2-year colleges; for example, the former group has an average ACT Composite score of 16.5, and the latter group has an average ACT Composite score of 15.5.

Students enrolled in public 4-year colleges have an average ACT Composite of 17.6; those enrolled in public master's level colleges have an average Composite of 17.4; those enrolled in public PhD level colleges have an average Composite of 20.7.

The average ACT Composite of students enrolled in private 4-year colleges is 19.8; for students enrolled in

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[2] J. Laing and M. Farmer, *Use of the ACT Assessment by Examinees With Disabilities* (ACT Research Report No. 84), Iowa City, Iowa: The American College Testing Program, 1984.

private master's level colleges, it is 19.4; for those enrolled in private PhD level colleges, it is 22.8. These orderings are uniform across all subtests.

The mean self-reported high school grades for students in 2-year colleges are 2.78 in English, 2.54 in mathematics, 2.84 in social studies, and 2.70 in natural sciences.

The averages for 4-year college students are 3.08 in English, 2.82 in mathematics, 3.18 in social studies, and 2.95 in natural sciences.

The high school grades of students in private 2-year colleges average about 0.09 grade units higher than those of students in public 2-year colleges. Students in private 4-year colleges have high school grades that are about .19 grade units higher, on the average, than those of students in public 4-year colleges.

There are also differences in self-reported high school grades among students enrolled in public and private master's level colleges. In English, students average about 2.94 (public) versus 3.05 (private); in mathematics, 2.67 and 2.86; in social studies, 3.04 and 3.19; in natural sciences, 2.84 and 2.98.

The self-reported high school grades of students enrolled in PhD level colleges average about .17 grade units higher than those of students enrolled in master's level colleges. Students in the private PhD level colleges also have considerably higher average self-reported grades (3.27) than those in the public PhD level colleges (3.06).

Region of College

The mean ACT Composite scores by region are: Southwest (16.4); Southeast (17.7); Eastern (18.7); and Midwest, Mountains/Plains and Western (19.7-19.9). It should be kept in mind that these differences may reflect

the under-representation of Western and Eastern colleges among ACT users.

Somewhat different regional patterns exist among the high school grades. Mean HSAs by region are: Eastern (2.86); Southwest (2.89); Southeast (2.91); Midwest (2.98); Western (3.03); and Mountains/Plains (3.05).

UNITED STATES' EXHIBIT 879

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY WHITE PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

FIRST-TIME FRESHMEN

	Black	White	Total Head-count	%B	%W
DSU	46	440	486	9.5%	90.5%
MSU	226	2,011	2,237	10.1%	89.9%
MUW	50	230	280	17.9%	82.1%
UM	110	1,549	1,692	6.5%	91.5%
USM*	162	989	1,289	12.6%	76.7%
UMMC**					
Total	594	5,219	5,984	9.9%	87.2%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 879 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY WHITE PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

UNDERGRADUATE

	Black	White	Total Head-count	%B	%W
DSU	466	2,236	2,707	17.2%	82.6%
MSU	1,120	8,814	9,934	11.3%	88.7%
MUW	307	1,429	1,757	17.5%	81.3%
UM	586	7,116	7,924	7.4%	89.8%
USM*	1,207	8,586	10,191	11.8%	84.3%
UMMC**					
Total	3,686	28,181	32,513	11.3%	86.7%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 879 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY WHITE PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

GRADUATE

	Black	White	Total Head-count	%B	%W
DSU	276	288	564	48.9%	51.1%
MSU	142	1,455	1,597	8.9%	91.1%
MUW	10	88	98	10.2%	89.8%
UM	96	893	1,118	8.6%	79.9%
USM*	259	2,082	2,471	10.5%	84.3%
UMMC**					
Total	783	4,806	5,848	13.4%	82.2%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 879 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY WHITE PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

PROFESSIONAL

	Black	White	Total Head-count	%B	%W
DSU					
MSU	2	124	126	1.6%	98.4%
MUW					
UM	29	465	494	5.9%	94.1%
USM*					
UMMC**	111	1,514	1,680	6.6%	90.1%
Total	142	2,103	2,300	6.2%	91.4%

* Represents combined full-time equivalent enrollment because head-count enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 880

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1985-86

FIRST-TIME FRESHMEN

	Black	White	Total Head-count	%B	%W
ASU	451	36	487	92.6%	7.4%
DSU	95	445	540	17.6%	82.4%
JSU	–	–	1,095	//	//
MSU	316	2,035	2,351	13.4%	86.6%
MUW	–	–	324	//	//
MVSU	421	2	423	99.5%	0.5%
UM	78	1 [illegible]	1,664	4.7%	93.1%
USM*	191	[illegible]	1,173	16.3%	79.0%
UMMC**					
Total	//	//	8,057	//	//

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

// Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 880 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1985-86

UNDERGRADUATE

	Black	White	Total Head-count	%B	%W
ASU	2,191	99	2,290	95.7%	4.3%
DSU	512	2,399	2,911	17.6%	82.4%
JSU	4,845	84	5,271	91.9%	1.6%
MSU	1,119	8,823	9,942	11.3%	88.7%
MUW	350	1,622	1,979	17.7%	82.0%
MVSU	2,089	11	2,103	99.3%	0.5%
UM	436	6,657	7,354	5.9%	90.5%
USM*	1,438	8,796	10,770	13.4%	81.7%
UMMC**					
Total	12,980	28,491	42,620	30.5%	66.8%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

// Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 880 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1985-86

GRADUATE

	Black	White	Total Head-count	%B	%W
ASU	217	9	226	96.0%	4.0%
DSU	124	345	473	26.2%	72.9%
JSU	681	154	1,154	59.0%	13.3%
MSU	131	1,590	1,721	7.6%	92.4%
MUW	8	51	60	13.3%	85.0%
MVSU	29	1	30	96.7%	3.3%
UM	87	834	1,166	7.5%	71.5%
USM*	178	1,886	2,210	8.1%	85.3%
UMMC**					
Total	1,455	4,870	7,040	20.7%	69.2%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

// Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 880 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1985-86

PROFESSIONAL

	Black	White	Total Head-count	%B	%W
ASU					
DSU					
JSU					
MSU	2	110	112	1.8%	98.2%
MUW					
MVSU					
UM	24	459	484	5.0%	94.8%
USM*					
UMMC**	139	1,412	1,551	9.0%	91.0%
Total	165	1,981	2,147	7.7%	92.3%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

// Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 881

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY WHITE PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

	FIRST-TIME FRESHMEN				
	Black	White	Total Head-count	%B	%W
DSU	46	440	486	9.5%	90.5%
MSU	226	2,011	2,237	10.1%	89.9%
MUW	50	230	280	17.9%	82.1%
UM	110	1,549	1,692	6.5%	91.5%
USM*	162	989	1,289	12.6%	76.7%
UMMC**					
Total	594	5,219	5,984	9.9%	87.2%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 881 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY WHITE PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

	UNDERGRADUATE				
	Black	White	Total Head-count	%B	%W
DSU	466	2,236	2,707	17.2%	82.6%
MSU	1,120	8,814	9,934	11.3%	88.7%
MUW	307	1,429	1,757	17.5%	81.3%
UM	586	7,116	7,924	7.4%	89.8%
USM*	1,207	8,586	10,191	11.8%	84.3%
UMMC**					
Total	3,686	28,181	32,513	11.3%	86.7%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 881 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY WHITE PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

GRADUATE

	Black	White	Total Head-count	%B	%W
DSU	276	288	564	48.9%	51.1%
MSU	142	1,455	1,597	8.9%	91.1%
MUW	10	88	98	10.2%	89.8%
UM	96	893	1,118	8.6%	79.9%
USM*	259	2,082	2,471	10.5%	84.3%
UMMC**					
Total	783	4,806	5,848	13.4%	82.2%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 881 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY WHITE PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

PROFESSIONAL

	Black	White	Total Head-count	%B	%W
DSU					
MSU	2	124	126	1.6%	98.4%
MUW					
UM	29	465	494	5.9%	94.1%
USM*					
UMMC**	111	1,514	1,680	6.6%	90.1%
Total	142	2,103	2,300	6.2%	91.4%

* Represents combined full-time equivalent enrollment because headcount enrollment was not provided for this institution.

** Represents black student enrollment for Schools of Medicine and Dentistry only.

– Institution indicated that these figures were unavailable.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 883

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY BLACK PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

	FIRST-TIME FRESHMEN				
	Black	White	Total Head-count	%B	%W
ASU	421	32	453	92.9%	7.1%
JSU	–	–	1,095	//	//
MVSU	461	0	461	100.0%	0.0%
Total	//	//	2,009	//	//

– Institution indicated that these figures were unavailable.

// Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 883 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY BLACK PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

	UNDERGRADUATE				
	Black	White	Total Head-count	%B	%W
ASU	2,171	79	2,250	96.5%	3.5%
JSU	5,087	43	6,163	82.5%	0.7%
MVSU	2,373	0	2,373	100.0%	0.0%
Total	9,631	122	10,786	89.3%	1.1%

– Institution indicated that these figures were unavailable.

// Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 883 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY BLACK PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

GRADUATE

	Black	White	Total Head-count	%B	%W
ASU	155	13	168	92.3%	7.7%
JSU	771	25	796	96.9%	3.1%
MVSU	102	0	102	100.0%	0.0%
Total	1,028	38	1,066	96.4%	3.6%

– Institution indicated that these figures were unavailable.

// Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 883 – Continued

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S HISTORICALLY BLACK PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1981-82

PROFESSIONAL

	Black	White	Total Head-count	%B	%W
ASU					
JSU					
MVSU					
Total					

– Institution indicated that these figures were unavailable.

// Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories, Nos. 1, 2, 3, and 4.

UNITED STATES' EXHIBIT 893i

1985-86 BLACK ACT TESTED MISSISSIPPI GRADUATES

TABLE 1.1 DISTRIBUTIONS OF ACT SCORE FREQUENCIES, PERCENTILE RANKS, AND PERCENTAGES FOR MEN AND WOMEN COMBINED (TOTAL)

Std	ACT English		ACT Mathematics		ACT Social Stu.		ACT Natural Sci.		ACT Composite	
Score	Freq	PR	Freq	PR	Freq	PR	Freq	PR	Freq	PR
36	0	99	0	99	0	99	0	99	0	99
35	0	99	0	99	0	99	0	99	0	99
34	0	99	0	99	0	99	1	99	0	99
33	0	99	2	99	1	99	2	99	0	99
32	1	99	1	99	4	99	3	99	0	99
31	1	99	2	99	5	99	7	99	0	99
30	3	99	1	99	7	99	21	99	2	99
29	4	99	3	99	9	99	15	99	4	99
28	9	99	10	99	17	99	27	99	7	99
27	22	99	14	99	17	99	23	99	13	99
26	28	99	33	99	50	98	51	98	26	99
25	34	98	35	98	29	98	56	96	34	99
24	65	97	42	98	54	97	86	95	31	98
23	113	96	89	96	85	95	124	93	55	97
22	171	93	51	95	72	94	138	90	77	96
21	195	89	105	93	86	92	131	88	117	94
20	292	84	88	91	102	90	125	85	129	92
19	209	79	71	90	101	88	190	82	130	89
18	331	74	113	88	117	86	439	76	149	86
17	278	68	137	86	109	84	392	68	195	83
16	354	62	160	83	165	81	366	60	247	78
15	303	55	83	80	109	79	423	52	287	73
14	312	49	182	78	131	76	444	44	318	67
13	347	43	242	73	312	72	401	36	368	60
12	340	36	249	69	246	66	412	28	401	53
11	280	30	206	64	289	61	249	21	460	44
10	400	23	149	61	442	54	205	17	486	35
9	236	17	366	56	460	45	246	12	437	26
8	190	13	394	48	481	36	227	7	424	17

UNITED STATES' EXHIBIT 893i – Continued

1985-86 BLACK ACT TESTED MISSISSIPPI GRADUATES

TABLE 1.1 DISTRIBUTIONS OF ACT SCORE FREQUENCIES, PERCENTILE RANKS, AND PERCENTAGES FOR MEN AND WOMEN COMBINED (TOTAL)

Std	ACT English		ACT Mathematics		ACT Social Stu.		ACT Natural Sci.		ACT Composite	
Score	Freq	PR	Freq	PR	Freq	PR	Freq	PR	Freq	PR
7	111	10	295	41	280	28	158	4	342	10
6	132	7	306	35	399	21	68	1	198	5
5	167	4	304	29	318	14	18	1	86	2
4	92	2	318	23	206	9	14	0	34	1
3	36	1	224	18	197	5	2	0	8	0
2	8	0	201	14	84	2	1	0	1	0
1	2	0	590	6	82	1	1	0	0	1

PERCENTAGES OF STUDENTS IN VARIOUS TEST SCORE INTERVALS

26-36	68	1	66	1	110	2	150	3	52	1
21-25	578	11	322	6	326	6	535	11	314	6
16-20	1464	29	569	11	594	12	1512	30	850	17
1-15	2956	59	4109	81	4036	80	2869	57	3850	76
mean	14.2		9.4		10.8		15.0		12.5	
S.D.	5.3		6.5		5.9		4.9		4.7	

Number of students – 5066

UNITED STATES' EXHIBIT 893j

1985-86 CAUCASIAN ACT TESTED MISSISSIPPI GRADUATES

TABLE 1.1 DISTRIBUTIONS OF ACT SCORE FREQUENCIES, PERCENTILE RANKS, AND PERCENTAGES FOR MEN AND WOMEN COMBINED (TOTAL)

Std	ACT English		ACT Mathematics		ACT Social Stu.		ACT Natural Sci.		ACT Composite	
Score	Freq	PR	Freq	PR	Freq	PR	Freq	PR	Freq	PR
36	0	99	18	99	0	99	0	99	0	99
35	0	99	11	99	0	99	16	99	0	99
34	0	99	26	99	6	99	35	99	2	99
33	30	99	28	99	32	99	90	99	7	99
32	19	99	49	99	70	99	170	98	31	99
31	48	99	41	99	107	99	327	96	51	99
30	39	99	39	98	161	97	307	93	99	99
29	144	98	93	98	222	96	247	90	136	98
28	150	97	205	96	211	94	312	88	213	96
27	275	95	221	94	199	92	337	85	310	94
26	322	92	399	92	420	89	508	81	325	91
25	322	89	373	88	357	86	558	77	411	88
24	617	85	417	85	497	82	598	71	508	84
23	811	79	598	80	589	77	690	66	533	79
22	931	71	373	76	427	73	607	60	604	74
21	1027	62	600	72	471	69	572	55	614	69
20	1085	53	438	67	514	64	376	50	656	63
19	581	46	451	63	421	60	606	46	657	57
18	793	39	512	59	452	56	1004	39	734	51
17	664	33	503	54	446	52	761	31	706	44
16	733	27	509	50	463	48	620	25	738	38
15	504	21	256	46	354	44	561	20	770	31
14	401	17	542	43	395	41	480	15	581	25
13	436	13	555	38	622	37	400	11	579	20
12	341	10	551	33	547	31	337	8	532	15
11	249	7	485	28	529	27	174	6	452	11
10	252	5	183	25	680	21	152	4	365	7
9	140	3	545	22	555	16	155	3	255	4
8	89	2	502	17	525	11	135	1	173	2

UNITED STATES' EXHIBIT 893j – Continued

1985-86 CAUCASIAN ACT TESTED MISSISSIPPI GRADUATES

TABLE 1.1 DISTRIBUTIONS OF ACT SCORE FREQUENCIES, PERCENTILE RANKS, AND PERCENTAGES FOR MEN AND WOMEN COMBINED (TOTAL)

Std	ACT English		ACT Mathematics		ACT Social Stu.		ACT Natural Sci.		ACT Composite	
Score	Freq	PR	Freq	PR	Freq	PR	Freq	PR	Freq	PR
7	70	2	358	14	252	7	51	1	112	1
6	84	1	306	11	303	5	29	0	53	0
5	46	0	292	8	161	3	5	0	17	0
4	21	0	205	6	119	2	3	0	5	0
3	5	0	141	4	80	1	3	0	0	1
2	0	1	135	3	24	0	3	0	0	1
1	0	1	268	1	18	0	0	1	0	1

PERCENTAGES OF STUDENTS IN VARIOUS TEST SCORE INTERVALS

26-36	1027	9	1130	10	1428	13	2349	21	1174	10
21-25	3708	33	2361	21	2341	21	3025	27	2670	24
16-20	3856	34	2413	21	2296	20	3367	30	3491	31
1-15	2638	23	5325	47	5164	46	2488	22	3894	35
mean	19.0		15.8		16.7		20.3		18.1	
S.D.	5.1		7.5		7.1		6.0		5.6	

Number of students – 11,229

UNITED STATES' EXHIBIT 894i

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
4			1	1	1		1	1	5 .10
5	1	2	4	6	4				17 .2
6	1	4	26	8	9	3		2	53 .5
7	3	16	30	34	18	4	1	6	112 1.0
8	8	12	69	46	20	13	2	3	173 1.5
9	4	26	82	86	33	17	2	5	255 2.3

UNITED STATES' EXHIBIT 894i – Continued

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
10	6	27	92	132	57	44	1	6	365 3.3
11	4	19	94	197	63	64	4	7	452 4.0
12	2	25	118	194	95	76	14	8	532 4.7
13	3	19	104	203	119	97	22	12	579 5.2
14	1	19	91	160	135	140	24	11	581 5.2
15	1	21	115	225	177	177	39	15	770 6.9
16	1	21	102	204	173	186	41	10	738 6.6

UNITED STATES' EXHIBIT 894i – Continued

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
17		11	72	199	143	221	49	11	706 6.3
18	2	12	68	190	176	211	65	10	734 6.5
19		3	55	135	153	230	73	8	657 5.9
20	2	5	48	126	137	231	98	9	656 5.8
21	2	2	30	94	122	244	109	11	614 5.5
22		4	29	92	111	234	132	2	604 5.4
23		4	20	71	91	206	137	4	533 4.7

UNITED STATES' EXHIBIT 894i – Continued

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
24	1		15	48	74	203	164	3	508 4.5
25		2	6	34	54	171	140	4	411 3.7
26	1	2	4	14	36	114	152	2	325 2.9
27			2	12	33	97	165	1	310 2.8
28				5	19	77	109	3	213 1.9
29				3	5	30	97	1	136 1.2
30			1	1	3	14	79	1	99 .9

UNITED STATES' EXHIBIT 894i – Continued

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
31					1	9	41		51
									.5
32						4	27		31
									.3
33							7		7
									.1
34							2		2
									.0
Column Total	43	256	1278	2520	2062	3117	1797	156	11229
	.4	2.3	11.4	22.4	18.4	27.8	16.0	1.4	100.0

Number of missing observations – 2

UNITED STATES' EXHIBIT 894j

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
2			1						1
									.0
3			2	4		2			8
									.2
4	1	4	11	11	3	3	1		34
									.7
5	1	15	22	27	11	3		2	86
									1.7
6	2	15	62	80	21	12	1	5	198
									3.9
7	4	31	88	124	50	39	1	5	342
									6.8
8	1	24	97	174	67	53	1	7	424
									8.4

UNITED STATES' EXHIBIT 894j – Continued

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
9	3	21	93	160	81	59	8	12	437
									8.6
10	2	21	98	173	89	90	9	4	486
									9.6
11	3	8	64	192	90	85	10	8	460
									9.1
12	1	15	64	122	85	94	14	6	401
									7.9
13	1	5	42	109	89	94	19	9	368
									7.3
14	1	4	33	93	77	95	14	1	318
									6.3
15		3	25	78	68	86	20	7	287
									5.7

UNITED STATES' EXHIBIT 894j – Continued

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
16		4	17	56	67	83	18	2	247
									4.9
17	2	1	11	48	37	71	23	2	195
									3.8
18		3	1	26	25	62	30	2	149
									2.9
19		1	4	26	20	49	28	2	130
									2.6
20		3	4	10	21	52	38	1	129
									2.5
21			6	7	12	61	28	3	117
									2.3
22		1	1	5	12	31	26	1	77
									1.5

UNITED STATES' EXHIBIT 894j – Continued

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
23			1	4	8	21	21		55 1.1
24				3	4	10	14		31 .6
25				5	5	13	11		34 .7
26				1	3	12	10		26 .5
27					2	5	6		13 .3
28					1	2	4		7 .1

UNITED STATES' EXHIBIT 894j – Continued

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
29							4		4 .1
30							2		2 .0
Column Total	22 .4	179 3.5	752 14.8	1538 30.4	948 18.7	1187 23.4	361 7.1	79 1.6	5066 100.0

Number of missing observations – 0

UNITED STATES' EXHIBIT 896

TABLE 1

Summary Statistics for ACT-Tested Black and White Students
Mississippi 1981-82 through 1985-86

	Black Students		White Students	
Year	N	Mean Composite Score	N	Mean Composite Score
1981-82	7,493	11.6	15,372	17.5
1982-83	7,688	11.5	15,080	17.3
1983-84	7,832	11.8	16,424	17.5
1984-85	7,843	11.9	17,703	17.9
1985-86	8,074	12.6	18,905	18.2

Source: Maxey's Deposition Exhibits Nos. 7 through 16 for Black and White ACT-Tested Miss. High School Students.

UNITED STATES' EXHIBIT 897

TABLE 1a

Selected Summary Statistics for ACT-Tested High School Graduates
Mississippi 1981-82 through 1985-86

	Black Graduates		White Graduates	
Year	N	Mean Composite	N	Mean Composite
1981-82	5,403	11.5	11,850	17.5
1982-83	5,544	11.3	10,771	17.3
1983-84	5,543	11.6	10,826	17.3
1984-85	5,320	11.7	11,150	17.6
1985-86	5,066	12.5	11,299	18.1

Source: Maxey's Deposition Exhibits Nos. 17 through 26 for Black and White ACT-Tested Miss. Graduates.

UNITED STATES' EXHIBIT 899

Table 2a

Percentage of ACT-Tested Graduates with Composite Scores In Various Score Intervals
Mississippi 1981-82 through 1985-86

ACT Composite Score Interval	1981-82		1982-83		1983-84		1984-85		1985-86	
	Black %	White %	Black %	White %	Black %	White %	Black %	White %	Black %	White %
15-35	20.2	67.8	21.4	66.3	23.5	65.7	23.4	68.8	29.7	72.2
1-14	79.8	32.2	78.6	33.7	76.5	34.3	76.6	31.2	70.3	27.8
13-35	31.5	79.3	32.1	77.3	34.4	77.2	34.6	79.7	43.2	82.5
1-12	68.5	20.7	67.9	22.7	65.6	22.8	65.4	20.3	56.8	17.5
9-14	55.5	29.1	50.4	30.1	49.7	30.0	50.6	27.5	48.8	24.6
9-12	44.2	17.6	39.8	19.0	38.8	18.5	39.3	16.6	35.2	14.3

Source: Maxey's Deposition Exhibits Nos. 27 through 36
for Black and White ACT-Tested Miss. Graduates:
HSGPA by ACT Composite Score.

UNITED STATES' EXHIBIT 900a

ACT COMPOSITE SCORES AND FRESHMAN GPA'S
UNIVERSITY OF MISSISSIPPI 1981-82 ACADEMIC YEAR

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	2	0	2	100.0%
33	1	0	1	100.0%
32	5	1	6	83.3%
31	7	1	8	87.5%
30	20	0	20	100.0%
29	35	1	36	97.2%
28	53	4	57	93.0%
27	53	5	58	91.4%
26	65	7	72	90.3%
25	90	17	107	84.1%
24	83	24	107	77.6%
23	83	25	108	76.9%
22	78	26	104	75.0%
21	83	31	114	72.8%
20	89	37	126	70.6%
19	73	33	106	68.9%
18	75	42	117	64.1%
17	59	62	121	48.8%
16	63	64	127	49.6%
15	71	56	127	55.9%
14	18	24	42	42.9%
13	13	14	27	48.1%
12	11	11	22	50.0%
11	2	7	9	22.2%
10	3	7	10	30.0%
9	2	1	3	66.7%
8	0	0	0	N/A
7	0	0	0	N/A
6	0	0	0	N/A
5	0	0	0	N/A
4	0	0	0	N/A
3	0	0	0	N/A
2	0	0	0	N/A
1	0	0	0	N/A
TOTALS	1137	500	1637	69.5%

UNITED STATES' EXHIBIT 900b

ACT COMPOSITE SCORES AND FRESHMAN GPA'S UNIVERSITY OF MISSISSIPPI 1981-82 ACADEMIC YEAR

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
32	1		1	100.0%
31	2		2	100.0%
30	2		2	100.0%
29	1		1	100.0%
28	4	1	5	80.0%
27	13	1	14	92.9%
26	11		11	100.0%
25	14		14	100.0%
24	11	1	12	91.75%
23	11	1	12	91.7%
22	17	3	20	85.0%
21	14	6	20	70.0%
20	13	2	15	86.7%
19	14	9	23	60.9%
18	17	7	24	70.8%
17	18	12	30	60.0%
16	15	9	24	62.5%
15	21	12	33	63.6%
14	8	17	25	32.0%
13	5	7	12	41.7%
TOTALS	212	88	300	70.7%

COMPOSITE

SOURCE: IHL 1981-18

UNITED STATES' EXHIBIT 900d

ACT COMPOSITE SCORES AND FRESHMAN GPA'S UNIVERSITY OF MISSISSIPPI 1983-84 ACADEMIC YEAR

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	1	0	1	100.0%
33	3	0	3	100.0%
32	2	0	2	100.0%
31	13	0	13	100.0%
30	18	2	20	90.0%
29	24	2	26	92.3%
28	45	2	47	95.7%
27	56	7	63	88.9%
26	50	7	57	87.7%
25	77	14	91	84.6%
24	56	16	72	77.8%
23	63	24	87	72.4%
22	70	18	88	79.5%
21	73	34	107	68.2%
20	68	43	111	61.3%
19	71	41	112	63.4%
18	67	40	107	62.6%
17	45	39	84	53.6%
16	55	56	111	49.5%
15	48	49	97	49.5%
14	12	17	29	41.4%
13	13	14	27	48.1%
12	1	11	12	8.3%
11	4	5	9	44.4%
10	2	6	8	25.0%
9	1	2	3	33.3%
TOTALS	938	449	1387	67.6%

COMPOSITE

SOURCE: IHL-1983-18

UNITED STATES' EXHIBIT 900g

ACT COMPOSITE SCORES AND FRESHMAN GPA'S JACKSON STATE UNIVERSITY ACADEMIC YEAR 1984-85

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	0	0	0	N/A
33	0	0	0	N/A
32	0	0	0	N/A
31	0	0	0	N/A
30	0	0	0	N/A
29	0	0	0	N/A
28	2	0	2	100.0%
27	2	0	2	100.0%
26	4	0	4	100.0%
25	18	1	19	94.7%
24	12	1	13	92.3%
23	19	2	21	90.5%
22	18	3	21	85.7%
21	34	12	46	73.9%
20	21	3	24	87.5%
19	25	8	33	75.8%
18	46	15	61	75.4%
17	27	9	36	75.0%
16	36	21	57	63.2%
15	44	32	76	57.9%
14	47	30	77	61.0%
13	59	50	109	54.1%
12	78	48	126	61.9%
11	79	83	162	48.8%
10	71	81	152	46.7%
9	24	43	67	35.8%
8			0	N/A
7			0	N/A
6			0	N/A
5			0	N/A
4			0	N/A
3			0	N/A
2			0	N/A
TOTALS	666	442	1108	60.1%

COMPOSITE

SOURCE: IHL 1984-85-18

UNITED STATES' EXHIBIT 900i

ACT COMPOSITE SCORES AND FRESHMAN GPA'S UNIVERSITY OF SOUTHERN MISSISSIPPI ACADEMIC YEAR 1985-86 15 AND ABOVE

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	0	0	0	N/A
33	0	0	0	N/A
32	4	0	4	100.0%
31	10	1	11	90.9%
30	16	1	17	94.1%
29	11	0	11	100.0%
28	37	3	40	92.5%
27	29	3	32	90.6%
26	21	9	30	70.0%
25	28	3	31	90.3%
24	50	14	64	78.1%
23	60	19	79	75.9%
22	48	22	70	68.6%
21	63	24	87	72.4%
20	59	27	86	68.6%
19	67	22	89	75.3%
18	68	38	106	64.2%
17	61	44	105	58.1%
16	59	44	103	57.3%
15	70	81	151	46.4%
TOTALS	761	355	1116	68.2%

COMPOSITE

SOURCE: IHL 1984-85-18

UNITED STATES' EXHIBIT 900i -- (Continued)

ACT COMPOSITE SCORES AND FRESHMAN GPA'S
UNIVERSITY OF SOUTHERN MISSISSIPPI ACADEMIC YEAR
1985-86

14 and Below

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
14	14	15	29	48.3%
13	6	12	18	33.3%
12	5	8	13	38.5%
11	1	6	7	14.3%
10	3	5	8	37.5%
9	0	4	4	0.0%
8	0	0	0	N/A
7	0	0	0	N/A
6	0	0	0	N/A
5	0	0	0	N/A
4	0	0	0	N/A
3	0	0	0	N/A
2	0	0	0	N/A
1	0	0	0	N/A
TOTALS	29	50	79	36.7%

COMPOSITE

SOURCE: IHL 1984-85-18

UNITED STATES' EXHIBIT 900j

ACT COMPOSITE SCORES AND FRESHMAN GPA'S
MISSISSIPPI STATE UNIVERSITY ACADEMIC YEAR 1985-86
15 AND ABOVE

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	0	0	0	N/A
33	1	0	1	100.0%
32	10	0	10	100.0%
31	26	0	26	100.0%
30	25	3	28	89.3%
29	49	2	51	96.1%
28	76	11	87	87.4%
27	70	13	83	84.3%
26	83	19	102	81.4%
25	105	23	128	82.0%
24	80	23	103	77.7%
23	91	25	116	78.4%
22	62	35	97	63.9%
21	85	58	143	59.4%
20	69	34	103	67.0%
19	75	33	108	69.4%
18	56	49	105	53.3%
17	51	50	101	50.5%
16	54	83	137	39.4%
15	53	75	128	41.4%
TOTALS	1121	536	1657	67.7%

COMPOSITE

SOURCE: IHL 1984-85-18

UNITED STATES' EXHIBIT 900j – (Continued)

ACT COMPOSITE SCORES AND FRESHMAN GPA'S MISSISSIPPI STATE UNIVERSITY ACADEMIC YEAR 1985-86 14 AND BELOW

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
14	18	23	41	43.9%
13	12	16	28	42.9%
12	11	21	32	34.4%
11	2	4	6	33.3%
10	2	5	7	28.6%
9	0	7	7	0.0%
8	0	0	0	N/A
7	0	0	0	N/A
6	0	0	0	N/A
5	0	0	0	N/A
4	0	0	0	N/A
3	0	0	0	N/A
2	0	0	0	N/A
1	0	0	0	N/A
0	0	1	1	N/A
TOTALS	45	77	122	36.9%

COMPOSITE

SOURCE: IHL 1984-85-18

UNITED STATES' EXHIBIT 900k
ACT COMPOSITE SCORES AND FRESHMAN GPA'S UNIVERSITY OF MISSISSIPPI 1985-86 ACADEMIC YEAR 15 AND ABOVE

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	0	0	0	N/A
33	3	0	3	100.0%
32	7	0	7	100.0%
31	11	2	13	84.6%
30	23	1	24	95.8%
29	25	4	29	86.2%
28	48	5	53	90.6%
27	55	7	62	88.7%
26	82	14	96	85.4%
25	68	12	80	85.0%
24	83	19	102	81.4%
23	90	32	122	73.8%
22	78	1	79	98.7%
21	78	27	105	74.3%
20	75	43	118	63.6%
19	77	28	105	73.3%
18	63	37	100	63.0%
17	64	58	122	52.5%
16	58	52	110	52.7%
15	56	54	110	50.9%
TOTALS	1044	396	1440	72.5%

COMPOSITE

SOURCE: IHL 1984-85-18

UNITED STATES' EXHIBIT 9001

ACT COMPOSITE SCORES AND FRESHMAN GPA'S UNIVERSITY OF MISSISSIPPI 1985-86 ACADEMIC YEAR

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	0	0	0	N/A
33	3	0	3	100.0%
32	7	0	7	100.0%
31	11	2	13	84.6%
30	23	1	24	95.8%
29	25	4	29	86.2%
28	48	5	53	90.6%
27	55	7	62	88.7%
26	82	14	96	85.4%
25	68	12	80	85.0%
24	83	19	102	81.4%
23	90	32	122	73.8%
22	78	31	109	71.6%
21	78	27	105	74.3%
20	75	43	118	63.6%
19	77	28	105	73.3%
18	63	37	100	63.0%
17	64	58	122	52.5%
16	58	52	110	52.7%
15	56	54	110	50.9%
14	22	21	43	51.2%
13	15	14	29	51.7%
12	12	10	22	54.5%
11	5	4	9	55.6%
10	3	2	5	60.0%
9	2	3	5	40.0%
8	0	0	0	N/A
7	0	0	0	N/A
6	0	0	0	N/A
5	0	0	0	N/A
4	0	0	0	N/A
3	0	0	0	N/A
2	0	0	0	N/A
1	0	0	0	N/A
TOTALS	1103	480	1583	69.7%

COMPOSITE

SOURCE: IHL-1985-18

UNITED STATES' EXHIBIT 9001 – (Continued)

ACT COMPOSITE SCORES AND FRESHMAN GPA'S UNIVERSITY OF MISSISSIPPI 1985-86 ACADEMIC YEAR 14 AND BELOW

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
14	22	21	43	51.2%
13	15	14	29	51.7%
12	12	10	22	54.5%
11	5	4	9	55.6%
10	3	2	5	60.0%
9	2	3	5	40.0%
8	0	0	0	N/A
7	0	0	0	N/A
6	0	0	0	N/A
5	0	0	0	N/A
4	0	0	0	N/A
3	0	0	0	N/A
2	0	0	0	N/A
1	0	0	0	N/A
TOTALS	59	54	113	52.2%

COMPOSITE

SOURCE: IHL-1985-18

UNITED STATES' EXHIBIT 900m

ACT COMPOSITE SCORES AND FRESHMAN GPA'S UNIVERSITY OF SOUTHERN MISSISSIPPI ACADEMIC YEAR 1985-86

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	0	0	0	N/A
33	0	0	0	N/A
32	4	0	4	100.0%
31	10	1	11	90.9%
30	16	1	17	94.1%
29	11	0	11	100.0%
28	37	3	40	92.5%
27	29	3	32	90.6%
26	21	9	30	70.0%
25	28	9	37	75.7%
24	50	14	64	78.1%
23	60	19	79	75.9%
22	48	22	70	68.6%
21	68	24	92	73.9%
20	59	27	86	68.6%
19	67	22	89	75.3%
18	68	38	106	64.2%
17	61	44	105	58.1%
16	59	44	103	57.3%
15	70	81	151	46.4%
14	14	15	29	48.3%
13	6	12	18	33.3%
12	5	8	13	38.5%
11	1	6	7	14.3%
10	3	5	8	37.5%
9	0	4	4	0.0%
8	0	0	0	N/A
7	0	0	0	N/A
6	0	0	0	N/A
5	0	0	0	N/A
4	0	0	0	N/A
3	0	0	0	N/A
2	0	0	0	N/A
1	0	0	0	N/A
TOTALS	795	411	1206	65.9%

COMPOSITE

SOURCE: IHL 1984-85-18

UNITED STATES' EXHIBIT 900n

ACT COMPOSITE SCORES AND FRESHMAN GPA'S MISSISSIPPI STATE UNIVERSITY ACADEMIC YEAR 1985-86

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36	0	0	0	N/A
35	0	0	0	N/A
34	0	0	0	N/A
33	1	0	17	5.9%
32	10	0	10	100.0%
31	26	0	26	100.0%
30	25	3	28	89.3%
29	49	2	51	96.1%
28	76	11	87	87.4%
27	70	13	83	84.3%
26	83	19	102	81.4%
25	105	23	128	82.0%
24	80	23	103	77.7%
23	91	25	116	78.4%
22	62	35	97	63.9%
21	85	58	143	59.4%
20	69	34	103	67.0%
19	75	33	108	69.4%
18	56	49	105	53.3%
17	51	50	101	50.5%
16	54	83	137	39.4%
15	53	75	128	41.4%
14	18	23	41	43.9%
13	12	16	28	42.9%
12	11	21	32	34.4%
11	2	4	6	33.3%
10	2	5	7	28.6%
9	0	7	7	0.0%
8	0	0	0	N/A
7	0	0	0	N/A
6	0	0	0	N/A
5	0	0	0	N/A
4	0	0	0	N/A
3	0	0	0	N/A
2	0	0	0	N/A
1	0	0	0	N/A
0	0	1	1	N/A
TOTALS	1166	613	1795	65.0%

COMPOSITE

SOURCE: IHL 1984-85-18

UNITED STATES' EXHIBIT 900o

ACT COMPOSITE SCORES AND FRESHMAN GPA'S MISSISSIPPI VALLEY STATE UNIV. 1984-85 ACADEMIC YEAR

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
36				N/A
35				N/A
34				N/A
33				N/A
32				N/A
31				N/A
30				N/A
29				N/A
28				N/A
27				N/A
26				N/A
25	1	1	2	50.0%
24	1	0	1	100.0%
23	1	0	1	100.0%
22	1	1	2	50.0%
21	5	1	6	83.3%
20	8	3	11	72.7%
19	8	2	10	80.0%
18	17	4	21	81.0%
17	23	11	34	67.6%
16	30	6	36	83.3%
15	20	3	23	87.0%
14	29	5	34	85.3%
13	29	10	39	74.4%
12	53	27	80	66.3%
11	69	31	100	69.0%
10	85	37	122	69.7%
9	21	20	41	51.2%
8				N/A
7				N/A
6				N/A
5				N/A
4				N/A
3				N/A
2				N/A
1				N/A
TOTALS	401	162	563	71.2%

COMPOSITE

SOURCE: IHL-8485-18

UNITED STATES' EXHIBIT 900p

ACT COMPOSITE SCORES AND FRESHMAN GPA'S ALCORN STATE UNIVERSITY 1985-86 ACADEMIC YEAR

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
27	0	1	1	0.0%
25	1	0	1	100.0%
24	6	0	6	100.0%
23	6	1	7	85.7%
22	6	0	6	100.0%
21	15	0	15	100.0%
20	13	2	15	86.7%
19	19	0	19	100.0%
18	17	2	19	89.5%
17	14	2	16	87.5%
16	22	8	30	73.3%
15	26	14	40	65.0%
14	24	7	31	77.4%
13	31	8	39	79.5%
12	38	19	57	66.7%
11	35	23	58	60.3%
10	68	52	120	56.7%
9	53	55	108	49.1%
TOTALS	394	194	588	67.0%

COMPOSITE

SOURCE: IHL 19-85-18

UNITED STATES' EXHIBIT 900q

ACT COMPOSITE SCORES AND FRESHMAN GPA'S DELTA STATE UNIVERSITY 1985-86 ACADEMIC YEAR

ACT #	# Greater than or equal to 2.0	# Less than or equal to 2.0	Total Number	% Greater than or equal to 2.0
29	4	1	5	80.0%
28	6	0	6	100.0%
27	6	1	7	85.7%
26	15	1	16	93.8%
25	14	3	17	82.4%
24	11	3	14	78.6%
23	28	3	31	90.3%
22	33	4	37	89.2%
21	29	8	37	78.4%
20	20	6	26	76.9%
19	32	5	37	86.5%
18	27	13	40	67.5%
17	33	21	54	61.1%
16	32	12	44	72.7%
15	24	15	39	61.5%
14	6	3	9	66.7%
13	7	13	20	35.0%
12	3	4	7	42.9%
11	4	4	8	50.0%
10	1	3	4	25.0%
TOTALS	335	123	458	73.1%

COMPOSITE

SOURCE: IHL 19-85-18

UNITED STATES' EXHIBIT 901

1985-86 Mississippi Demographic Survey: 135 Districts Common to 1985-86 and 1986-87 surveys

Total 12th grade	24,160
	− 1,129
	23,031
Total Black	10,885
	− 1,728
	9,157
Total White	13,148
	− 1,994
	11,154
Total Oriental	86
	−10
	76
Total Hispanic	24
	− 1
	23
Total Amer. Indian	17

Demographic Survey Preliminary Results 1985-86

* * * * *

Results By Race:

Blacks	210,104	50.85%
Whites	200,595	48.55%
Oriental	1,624	00.39%
Hispanic	377	00.09%
Indian	431	00.10%
Other	15	00.004%

* * * * *

UNITED STATES' EXHIBIT 901 – (Continued)

PRELIMINARY RESULTS
DEMOGRAPHIC SURVEY
1986-87

* * * * *

Results By Race:		
Blacks:	236,534	50.02%
Whites:	232,616	49.19%
Orientals:	1,757	.0037%
Hispanics:	481	.0010%
Indians:	499	.0011%
Other:	451	.0010%

* * * * *

PRELIMINARY RESULTS
DEMOGRAPHIC SURVEY
1986-87

* * * * *

12th GRADE – Total:	26,818	
Black	12,164	45.3576%
White	14,516	54.1278%
Oriental	67	.2498%
Hispanic	30	.1119%
Amer. Indian	12	.0447%
Other	29	.1081%

UNITED STATES' EXHIBIT 903

ACT STANDARD RESEARCH SERVICE REPORT 1985-86 FRESHMEN PAGE 1.00
MS VALLEY STATE UNIV ITTA BENA MS 38941 COLLEGE CODE 2224 SUMMARY ANALYSIS

TABLE H-1 Relative Efficiency of Different ACT Indices in Predicting College Grades

College GPA	Area	N-CT	T Index		H Index		TH Index	
			R	SE-Est	R	SE-Est	R	SE-Est
ENGLISH	E	130	0.274	1.112	0.373	1.073	0.406	1.041
MATHEMATICS	M	134	0.348	1.422	0.241	1.472	0.424	1.353
SOCIAL SCIENCE	S	91	0.275	1.035	0.274	1.036	0.361	0.981
OVERALL	O	176	0.215	0.804	0.369	0.765	0.387	0.750

* *

National Medians for ACT Indices Obtained From The 82-3, 83-4 AND 84-5 Research Services*

College GPA	T Index		H Index		TH Index	
	R	SE-Est	R	SE-Est	R	SE-Est
ENGLISH	0.426	0.847	0.411	0.851	0.495	0.798
MATHEMATICS	0.398	1.124	0.415	1.106	0.493	1.036
SOCIAL SCIENCE	0.491	0.921	0.459	0.945	0.561	0.871
NATURAL SCIENCE	0.475	0.970	0.471	0.978	0.567	0.904
OVERALL	0.478	0.728	0.487	0.725	0.565	0.682

* These data are taken from Summary Tables S-4.1 through S-4.6

UNITED STATES' EXHIBIT 912

PROPOSED MODIFIED STIPULATIONS

Proposed Stipulation No. 89:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1960-61 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn A&M Coll.	$7,714	$6,181	$4,486	$3,984
Delta State Coll.	6,800	6,425	5,693	4,800
Jackson State Coll.	7,485	5,914	4,758	4,190
Miss. State Univ.	7,394	6,522	5,465	4,471
Miss. State Coll. for Women	6,625	5,631	5,392	4,840
Miss. Vocational College	6,900	5,300	4,648	3,672
University of Miss.	7,873	6,561	5,460	4,090
Miss. Southern College	7,133	6,212	5,281	4,171

UNITED STATES' EXHIBIT 912 – (Continued)

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1959-60 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn A&M Coll.	$7,714	$6,181	$4,486	$3,984
Delta State Coll.	6,800	6,425	5,693	4,800
Jackson State Coll.	7,485	5,914	4,758	4,190
Miss. State Univ.	7,394	6,522	5,465	4,471
Miss. State Coll. for Women	6,625	5,631	5,392	4,840
Miss. Vocational College	6,900	5,300	4,648	3,672
University of Miss.	7,873	6,561	5,460	4,090
Miss. Southern College	7,133	6,212	5,281	4,171

Proposed Stipulation No. 90:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1971-72 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn Coll.	$13,345	$11,477	$10,018	$8,184
Delta State Coll.	14,902	13,603	11,297	8,452
Jackson State Coll.	14,118	12,946	10,552	8,693
Miss. State Coll. for Women	14,987	11,985	10,434	9,010
Miss. Valley State	11,818	11,244	9,190	7,377
Miss. State Univ.	16,293	14,712	10,989	7,931
University of Miss.	16,559	13,800	11,358	7,913
University of So. Miss.	14,998	13,438	11,664	8,918

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1971-72 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn Coll.	$13,445	$11,477	$10,018	$8,184
Delta State Coll.	14,902	13,603	11,297	8,452
Jackson State Coll.	14,118	12,946	10,552	8,693
Miss. State Coll. for Women	14,987	11,985	10,434	9,010
Miss. Valley State	11,818	11,244	9,190	7,377
Miss. State Univ.	16,293	14,172	10,989	7,931
University of Miss.	16,559	13,800	11,358	7,913
University of So. Miss.	14,998	13,438	11,664	8,918

Proposed Stipulation No. 92:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1973-74 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn Coll.	$15,239	$13,214	$11,333	$8,707
Delta State Coll.	18,365	15,596	12,546	9,958
Jackson State Coll.	16,494	14,404	13,016	9,974
Miss. State Coll. for Women	16,429	13,284	11,307	10,072
Miss. Valley State	14,270	12,434	8,816	8,365
Miss. State Univ.	19,965	15,366	12,551	9,056
University of Miss.	18,839	15,289	12,657	8,357
University of So. Miss.	18,504	15,472	12,990	10,146

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1973-74 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn Coll.	$15,239	$13,214	$11,333	$8,707
Delta State Coll.	18,365	15,596	12,546	9,958
Jackson State Coll.	16,494	14,404	13,016	9,974
Miss. State Coll. for Women	16,429	13,284	11,307	10,072
Miss. Valley State	14,270	12,434	8,816	8,365
Miss. State Univ.	19,665	15,366	12,551	9,056
University of Miss.	18,839	15,289	12,657	8,357
University of So. Miss.	18,504	15,472	12,990	10,146

Proposed Stipulation No. 94:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1975-76 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$17,600	$14,673	$11,960	$9,619
Delta State Univ.	20,180	17,187	13,756	11,533
Jackson State Univ.	17,418	16,164	14,319	11,667
Miss. State Univ.	20,005	16,217	13,427	10,128
Miss. Univ. for Women	18,081	14,773	13,293	10,734
Miss. Valley State	15,865	14,383	11,260	9,497
University of Miss.	19,854	16,534	13,320	9,236
University of So. Miss.	18,288	16,155	13,840	10,860

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1975-76 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$17,600	$14,673	$11,960	$9,619
Delta State Univ.	20,180	17,187	13,756	11,533
Jackson State Univ.	17,418	16,164	14,319	11,667
Miss. State Univ.	20,005	16,217	13,427	10,128
Miss. Univ. for Women*	18,009	14,773	12,497	10,088
Miss. Valley State	15,865	14,383	11,260	9,497
University of Miss.	19,854	16,534	13,320	9,236
University of So. Miss.*	18,265	16,155	13,775	11,006

* These salaries exclude nursing positions.

Proposed Stipulation No. 95:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1976-77 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$17,423	$15,108	$12,008	$11,636
Delta State Univ.	20,440	16,740	14,026	11,695
Jackson State Univ.	18,739	16,974	14,801	12,345
Miss. State Univ.	20,561	16,848	14,094	11,320
Miss. Univ. for Women	17,300	14,887	13,315	10,656
Miss. Valley State	16,128	15,570	11,811	11,134
University of Miss.	20,320	16,573	13,614	9,240
University of So. Miss.	19,183	17,386	14,159	10,952

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1976-77 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$17,423	$15,108	$12,066	$11,035
Delta State Univ.	20,440	16,740	14,026	11,695
Jackson State Univ.	18,739	16,974	14,801	12,345
Miss. State Univ.	20,561	16,848	14,094	11,320
Miss. Univ. for Women	17,300	14,887	13,315	10,656
Miss. Valley State	16,128	15,570	11,811	11,134
University of Miss.	20,320	16,573	13,614	9,240
University of So. Miss.*	19,167	17,372	14,034	11,019

* These salaries exclude nursing positions.

Proposed Stipulation No. 96:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1977-78 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$19,229	$15,854	$13,343	$10,486
Delta State Univ.	21,613	17,721	15,112	12,262
Jackson State Univ.	19,652	18,202	15,946	13,434
Miss. State Univ.	23,749	18,029	14,789	10,609
Miss. Univ. for Women	20,026	15,348	13,868	12,028
Miss. Valley State	15,997	14,785	11,299	10,016
University of Miss.	24,090	18,791	15,041	10,386
University of So. Miss.	22,274	18,438	15,308	12,488

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1977-78 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$19,229	$15,854	$13,343	$10,486
Delta State Univ.	21,613	17,721	15,122	12,262
Jackson State Univ.	19,652	18,202	15,946	13,434
Miss. State Univ.	23,749	18,029	14,789	10,609
Miss Univ. for Women	20,026	15,348	13,868	12,028
Miss. Valley State	15,997	14,785	11,299	10,016
University of Miss.	24,090	18,791	15,041	10,386
University of So. Miss.	22,274	18,438	15,308	12,488

Proposed Stipulation No. 99:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1980-81 academic year:.

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$25,762	$21,802	$17,665	$14,222
Delta State Univ.	25,836	20,186	11,276	14,977
Jackson State Univ.	25,542	22,254	19,220	16,559
Miss. State Univ.	28,222	22,038	18,444	13,698
Miss. Univ. for Women	24,157	20,676	17,948	15,432
Miss. Valley State	23,168	20,253	16,166	13,750
University of Miss.	29,740	23,102	18,649	13,759
University of So. Miss.	28,414	23,072	18,803	15,203

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1980-81 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$25,762	$21,802	$17,665	$14,222
Delta State Univ.	25,836	20,186	17,276	14,977
Jackson State Univ.	25,542	22,254	19,220	16,559
Miss. State Univ.	28,222	22,038	18,444	13,698
Miss. Univ. for Women	24,157	20,676	17,948	15,432
Miss. Valley State	23,168	20,253	16,166	13,750
University of Miss.	29,740	23,102	18,649	13,759
University of So. Miss.	28,414	23,072	18,803	15,203

Proposed Stipulation No. 140:

The following table accurately sets out the average mean salaries, by rank, for faculty members at each institution for the 1959-60 academic year:

Institution	Dep't Head	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M Coll.	–	$6,400	$5,352	$4,092	$3,333	$4,294
Delta State Coll.	6,700	6,800	6,067	5,333	4,725	5,698
Jackson State Coll.	–	6,862	5,062	4,346	3,973	4,910
Miss. Southern Coll.	6,997	6,997	5,712	4,848	3,824	5,374
Miss. State Coll. for Women	6,976	6,751	5,252	4,868	4,467	5,487
Miss. State Univ.	7,294	6,905	5,974	5,117	4,118	5,616
Miss. Vocational Coll.	--	6,214	4,500	3,735	3,116	3,928
University of Miss.	7,846	7,669	6,008	4,993	3,928	5,935

RESPONSE

Stipulated, except that under Mississippi Vocational College the correct figure under "All Ranks" is 3905.

Proposed Stipulation No. 168:

The following table accurately sets out the average mean salaries, by rank, for faculty members at each institution for the 1959-60 academic year:

Institution	Dep't Head	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M Coll.	–	$6,400	$5,352	$4,092	$3,333	$4,294
Delta State Coll.	$6,700	6,800	6,067	5,333	4,725	5,698
Jackson State Coll.	–	6,862	5,062	4,346	3,973	4,910
Miss. Southern Coll.	6,997	6,997	5,712	4,848	3,824	5,374
Miss. State Coll. for Women	6,976	6,751	5,252	4,868	4,467	5,487
Miss. State Univ.	7,294	6,905	5,974	5,117	4,118	5,616
Miss. Vocational Coll.	–	6,214	4,500	3,735	3,116	3,928
University of Miss.	7,846	7,669	6,008	4,993	3,928	5,935

RESPONSE

Stipulated, except that under Mississippi Vocational College the correct figure under "All Ranks" is 3905.

Proposed Stipulation No. 169:

The following table accurately sets out the average mean salaries, by rank, for faculty members at each institution for the 1960-61 academic year:

Institution	Dep't Head	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M Coll.	–	$7,714	$6,181	$4,486	$3,984	$5,070
Delta State Coll.	$6,800	6,800	6,425	5,692	4,800	6,062
Jackson State Coll.	–	7,485	5,914	4,758	4,190	5,438
Miss. Southern Coll.	7,946	7,133	6,212	5,281	5,171	5,938
Miss. State Coll. for Women	7,647	6,625	5,631	5,392	4,840	5,947
Miss. State Univ.	8,804	7,394	6,522	5,465	4,471	5,938
Miss. Vocational Coll.	–	6,900	5,300	3,672	3,251	4,574
University of Miss.	8,659	7,873	6,561	5,460	4,090	6,400

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, for faculty members at each institution for the 1960-61 academic year:

Institution	Dep't Head	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A &M Coll.	–	$7,714	$6,181	$4,486	$3,984	$5,070
Delta State Coll.	7,063	6,800	6,425	5,692	4,800	6,068
Jackson State Coll.	–	7,485	5,914	4,758	4,190	5,438
Miss. Southern Coll.	7,946	7,133	6,212	5,281	5,171	5,938
Miss. State Coll. for Women	7,647	6,625	5,631	5,392	4,840	5,947
Miss. State Univ.	8,804	7,394	6,522	5,465	4,471	6,241
Miss. Vocational Coll.	–	6,900	5,300	4,648	3,672	4,574
University of Miss.	8,659	7,873	6,561	5,460	4,090	6,400

Proposed Stipulation No. 170:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1961-62 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$8,100	$5,962	$4,574	$3,731	$4,987
Delta State College	7,520	6,536	5,685	4,733	6,069
Jackson State College	7,668	5,917	4,781	4,153	5,448
Miss. State Univ.	8,059	6,917	5,736	4,279	6,359
Miss. State Coll. for Women	7,285	5,764	5,477	4,750	5,865
Miss. Valley College	7,500	5,389	4,604	3,663	4,494
University of Miss.	8,166	6,740	5,580	4,279	6,489
University of So. Miss.	7,784	6,341	5,394	4,265	6,124

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1961-62 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$8,100	$5,962	$4,574	$3,731	$4,987
Delta State College	7,520	6,536	5,685	4,733	6,069
Jackson State College	7,668	5,917	4,781	4,153	5,448
Miss. State Univ.	8,059	6,917	5,736	4,559	6,359
Miss. State Coll. for Women	7,285	5,764	5,477	4,850	5,865
Miss. Valley College	7,500	5,389	4,604	3,663	4,494
University of Miss.	8,166	6,740	5,580	4,279	6,489
University of So. Miss.	7,784	6,341	5,394	4,265	6,124

Proposed Stipulation No. 171:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1962-63 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$8,294	$5,433	$4,574	$3,731	$4,987
Delta State College	8,244	7,370	6,087	5,027	6,534
Jackson State College	8,500	6,460	5,315	4,550	6,095
Miss. State Univ.	9,300	7,431	6,336	4,724	6,988
Miss. State Coll. for Women	8,050	6,321	5,870	5,086	6,287
Miss. Valley College	8,083	5,780	5,043	4,081	4,909
University of Miss.	8,805	7,333	6,040	4,423	6,954
University of So. Miss.	8,310	7,431	5,861	4,536	6,579

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1962-63 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$8,294	$5,433	$4,777	$3,826	$5,533
Delta State College	8,244	7,370	6,087	5,027	6,534
Jackson State College	8,500	6,460	5,315	4,550	6,095
Miss. State Univ.	9,300	7,431	6,336	4,725	6,988
Miss. State Coll. for Women	8,050	6,321	5,870	5,086	6,287
Miss. Valley College	8,083	5,780	5,043	4,081	4,909
University of Miss.	8,805	7,333	6,040	4,423	6,954
University of So. Miss.	8,310	6,837	5,861	4,536	6,579

Proposed Stipulation No. 172:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1963-64 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$8,527	$6,000	$4,772	$4,000	$5,241
Delta State College	8,420	7,740	6,210	5,080	6,520
Jackson State College	8,450	6,438	5,300	4,440	6,225
Miss. State Univ.	9,248	7,637	6,368	4,737	7,125
Miss. State Coll. for Women	7,840	6,444	5,840	5,080	6,257
Miss. Valley College	8,428	5,900	5,010	4,339	5,233
University of Miss.	8,922	7,551	6,254	4,758	7,435
University of So. Miss.	8,456	6,912	5,827	4,773	6,773

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1963-64 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$8,527	$6,000	$4,772	$4,000	$5,241
Delta State College	8,420	7,740	6,210	5,080	6,520
Jackson State College	8,450	6,438	5,300	4,440	6,225
Miss. State Univ.	9,248	7,637	6,368	4,737	7,125
Miss. State Coll. for Women	7,840	6,444	5,840	5,080	6,257
Miss. Valley College	8,428	5,900	5,010	4,339	5,233
University of Miss.	8,922	7,551	6,254	4,768	7,435
University of So. Miss.	8,456	6,912	5,827	4,733	6,773

Proposed Stipulation No. 173:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1964-65 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$ 8,483	$5,604	$4,790	$4,355	$5,351
Delta State College	9,420	8,050	6,981	5,674	7,233
Jackson State College	8,725	6,694	5,887	5,217	6,236
Miss. State Univ.	10,382	8,619	7,084	5,468	7,785
Miss. State Coll. for Women	9,152	7,561	6,715	5,674	7,259
Miss. Valley College	11,400	6,133	5,714	4,902	5,196
University of Miss.	9,839	8,459	7,155	5,014	8,204
University of So. Miss.	8,824	7,829	7,004	5,292	7,358

RESPONSE

Not stipulated. This alternative is proposed:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1964-65 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$ 8,727	$6,044	$5,147	$4,375	$5,989
Delta State College	9,225	8,050	6,800	5,676	7,25[illegible]
Jackson State College	8,590	6,631	5,833	5,070	6,276
Miss. State Univ.	10,083	8,174	6,795	5,425	7,944
Miss. State Coll. for Women	9,152	7,561	6,715	5,674	7,259
Miss. Valley College	8,906	6,133	5,656	4,938	5,275
University of Miss.	9,881	8,549	7,155	5,014	8,250
University of So. Miss.	9,779	7,837	6,997	5,292	7,786

UNITED STATES' EXHIBIT 913

PROPOSED STIPULATIONS

Proposed Stipulation No. 174:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1965-66 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$ 8,527	$6,150	$5,319	$4,570	$5,807
Delta State College	9,510	8,290	7,028	5,803	7,407
Jackson State College	8,783	7,085	6,102	5,295	6,394
Miss. State Univ.	10,249	9,146	7,228	5,320	7,885
Miss. State Coll. for Women	9,185	7,663	6,590	5,627	7,389
Miss. Valley College	8,280	5,700	5,238	4,827	5,163
University of Miss.	9,827	8,542	6,972	5,096	8,095
University of So. Miss.	9,050	8,128	7,117	5,295	7,574

RESPONSE

Stipulated.

Proposed Stipulation No. 175:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1966-67 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$ 9,922	$ 8,014	$6,416	$5,507	$7,388
Delta State College	10,595	9,509	7,906	6,360	8,365
Jackson State College	10,005	7,854	6,819	6,012	7,224
Miss. State Univ.	12,550	10,177	8,481	6,051	9,789
Miss. State Coll. for Women	10,971	9,090	7,724	6,663	8,709
Miss. Valley College	10,064	9,002	6,641	5,353	6,418
University of Miss.	12,006	10,161	8,171	5,649	9,583
University of So. Miss.	10,966	9,244	8,274	6,247	8,793

RESPONSE

Stipulated.

Proposed Stipulation No. 176

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1967-68 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$10,368	$ 8,441	$6,759	$6,065	$7,676
Delta State College	11,884	10,552	8,900	7,000	9,143
Jackson State College	10,300	8,029	6,932	6,166	7,500
Miss. State Univ.	12,737	10,677	9,045	6,271	10,097
Miss. State Coll. for Women	11,148	9,176	7,833	6,820	8,847
Miss. Valley College	9,722	9,214	7,083	5,978	6,950
University of Miss.	12,126	10,762	8,511	6,066	9,977
University of So. Miss.	11,457	9,887	8,630	6,659	9,262

RESPONSE

Stipulated.

Proposed Stipulation No. 249

The following accurately represents the total headcount enrollment, the total black enrollment and the percentage of black enrollment in credit courses at the Natchez Center for the fall terms of the years indicated.

Fall Term	*Total*	*Total Black*	*% Black*
1973-74	313	83	26.5
1974-75	454	INA	INA
1975-76	434	81	18.7
1976-77	411	83	20.2
1977-78	282	66	23.4
1978-79	307	66	21.5
1979-80	282	51	18.1
1980-81	264	INA	INA

INA – Information not available

RESPONSE

Stipulated.

Proposed Stipulation No. 368:

Exhibit US-244 accurately sets forth the number of faculty (full-time and part-time) by race, teaching classes at USM-Natchez from fall 1976-77 to winter 1979-80. The exhibit includes Alcorn State University faculty teaching at USM-Natchez on a part-time basis; it does not include ASU nursing facility.

RESPONSE

Stipulated.

Proposed Stipulation No. 370:

The attached table accurately sets forth the headcount enrollment, by race, for the Jackson branch of Mississippi State University from fall 1975 to fall 1979.

RESPONSE

Stipulated.

Universities Center
MISSISSIPPI STATE UNIVERSITY – JACKSON
Headcount Enrollments By Race

Term:		*White*	*Black*	*Other*
Fall 1975	Undergraduate	49	0	0
	Graduate	192	29	1
Spring 1976	Undergraduate	39	0	0
	Graduate	246	27	0
Summer 1976	Undergraduate	60	1	0
	Graduate	270	36	1
Fall 1976	Undergraduate	37	1	0
	Graduate	227	23	1
Spring 1977	Undergraduate	37	3	0
	Graduate	281	44	0
Summer 1977	Undergraduate	40	1	0
	Graduate	238	48	0
Fall 1977	Undergraduate	37	1	0
	Graduate	227	23	0
Spring 1978	Undergraduate	60	10	0
	Graduate	244	29	0
Summer 1978	Undergraduate	67	5	0
	Graduate	221	33	0
Fall 1978	Undergraduate	36	1	0
	Graduate	182	28	0
Spring 1979	Undergraduate	62	1	0
	Graduate	232	26	0
Summer 1979	Undergraduate	33	0	0
	Graduate	156	10	1
Fall 1979	Undergraduate	33	0	0
	Graduate	156	10	0

Source: MSU-Jackson Ethnic Enrollment Reports

Proposed Stipulation No. 371:

The attached table accurately sets forth the headcount enrollment, by race, for the Jackson branch of the University of Mississippi from fall 1974 to spring 1980.

RESPONSE

Stipulated.

Universities Center
UNIVERSITY OF MISSISSIPPI – JACKSON
Headcount Enrollments By Race

Term:		*White*	*Black*	*Other*
Fall 1974	Undergraduate	41	2	0
	Graduate	117	13	1
Spring 1975	Undergraduate	55	1	0
	Graduate	179	15	2
Summer 1975	Undergraduate	90	3	0
	Graduate	211	21	4
Fall 1975	Undergraduate	89	6	0
	Graduate	160	16	0
Spring 1976	Undergraduate	80	4	0
	Graduate	206	13	0
Summer 1976	Undergraduate	94	4	0
	Graduate	169	23	1
Fall 1976	Undergraduate	127	7	0
	Graduate	169	15	0
Spring 1977	Undergraduate	52	1	0
	Graduate	159	9	1
Summer 1977	Undergraduate	41	1	0
	Graduate	153	25	0
Fall 1977	Undergraduate	26	2	0
	Graduate	125	16	2
Spring 1978	Undergraduate	19	1	1
	Graduate	121	10	1
Summer 1978	Undergraduate	39	4	0
	Graduate	96	18	0
Fall 1978	Undergraduate	37	1	0
	Graduate	125	13	0

Universities Center
UNIVERSITY OF MISSISSIPPI – JACKSON – Continued
Headcount Enrollments By Race

Term:		*White*	*Black*	*Other*
Spring 1979	Undergraduate	35	0	0
	Graduate	81	13	0
Summer 1979	Undergraduate	67	8	0
	Graduate	53	8	0
Fall 1979	Undergraduate	38	1	0
	Graduate	64	6	0
Spring 1980	Undergraduate	22	1	0
	Graduate	54	2	0

Source: Deposition of Bruce J. Bellande, Exh. BB-2

Proposed Stipulation No. 376:

Beginning with the spring semester of the 1979-80 academic year, the Board of Trustees has provided classroom space at the Universities Center to Hinds Junior College for instruction in lower division college courses.

RESPONSE

Stipulated.

Proposed Stipulation No. 377:

Exhibit US-250 accurately sets forth the courses offered by Hinds Junior College, with their respective enrollments, at the Universities Center during the spring, summer and fall terms of 1980.

RESPONSE

Stipulated.

Proposed Stipulation No. 667:

Exhibit US-039 labeled "Factors Involved in the Admission to Freshman Class Standing at State Institutions of Higher Education in Mississippi", accurately describes factors which various universities considered for freshman admission as of February 1976.

RESPONSE

Stipulated.

UNITED STATES' EXHIBIT 39

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

Factors Involved in the Admission to Freshmen Class Standing at State Institutions of Higher Learning in Mississippi

February, 1976

A catalogue survey of the admission policies of the eight state universities reveals some twelve factors which various universities consider for general or regular admission to the freshmen class. These factors do not necessarily represent all requirements for each university, but include those of greater importance relative to the total admission procedure. Transfer, special, or early admission programs are not included in this discussion. Possible factors is published in university bulletins include submission of score on the American College Testing (ACT) Program test, graduation from an accredited high school with a minimum of 15 acceptable units, high school transcripts, letters or signatures of recommendation, official or formal application forms, acceptable academic record and moral conduct, physical examination, and application fee. Some of the universities have special admission procedures for students graduating from non accredited high schools or for those students who have completed 15 units, but have not graduated from high school.

Each of the universities requires entering freshmen to submit standardized test scores, although specific requirements vary. Two institutions, Jackson State University and Mississippi University for Women, accept either the scores for the ACT or the Scholastic Aptitude Test (SAT) of the College Entrance Examination Board. Officials at Mississippi University for Women add that this university converts the entering student's SAT scores to

equivalent ACT scores. Board of Trustees policy specifies that all applications for admission to the freshman class must be supported by the applicant's score on the ACT. Minimum scores can be established by universities at each institution. Board policy requires that all resident students must achieve a composite standard score of 20 unless this requirement is waived for scholarship award purposes by the executive head of the institution. Each university's specific requirements for admission relative to the ACT appear in a separate section of this report.

Most of the universities with the exception of Jackson State University and the University of Southern Mississippi require graduation from an accredited high school with a minimum of at least 15 acceptable units. The catalogues at each university specify the units required in subject areas. Mississippi University for Women will fully admit students who graduate from accredited high schools in the upper half of their classes, regardless of the specified units of credit. Mississippi Valley State University requires a minimum of 16 units. The University of Mississippi does not indicate whether or not the high school must be accredited. Jackson State University requires graduation from high school without mention of accreditation or specified credits. High school transcripts are required by the University of Southern Mississippi, although this university implies that high school graduation is a requirement.

All eight universities require the entering freshman to forward high school transcripts to the institution. Jackson State University, however, requires the student's high school records only for those failing to have ACT scores mailed to the University or to achieve a minimum score of 15 on the ACT. The University of Mississippi indicates that the transcript must show at least 7 semesters of secondary work. Other institutions will consider admission

on the basis of 6 semesters and require the final semester records to be filed later.

Three universities state that the student must file letters or signatures of recommendation: Alcorn State University, Delta State University, and Mississippi Valley State University. The other universities may have such a requirement as part of their formal application forms, but do not specify any such requirement in their respective catalogues.

Each university except Mississippi University for Women specifies that the student must submit some kind of official application form. Jackson State University requires such a form only for those students who fail to have ACT scores mailed to the University or who fail to score at least 15 on the ACT. Mississippi University for Women implies that a form is necessary, but does not specifically state this requirement.

Delta State University, Mississippi University for Women, Mississippi Valley State University, and the University of Southern Mississippi make direct reference to the need for the applicant to be of acceptable moral character and have an overall good academic record. Mississippi University for Women bases its final selection of students for admission on the student's (1) academic record, (2) ACT or SAT scores, and (3) "personal fitness for M.U.W." Other institutions may consider evidence of moral character and academic ability to be a part of the requirement for recommendations or may include the need for such evidence in the application form. Not all of the universities, however, make direct mention of this requirement in their catalogues.

Physical examinations are required by Alcorn State University, Delta State University, Mississippi University for Women, and Mississippi Valley State University. Other institutions may include a physical examination form as part of the official application form for admission.

Students who graduate from unaccredited high schools are admitted to Delta State University after special examination. Mississippi University for Women admits graduates from unaccredited high schools on a conditional basis. If the student completes 15 acceptable units without actually graduating from high school, Mississippi University for Women will also consider her for admission.

Most of the universities except the University of Mississippi state that students who are at least 20 years old and who have not graduated from high school can be admitted on the basis of satisfactory scores on the General Education Development (GED) test. Alcorn State University and Delta State University require a student to be 21 before he can be admitted through the GED program. Jackson State University specifies no minimum age. Mississippi University for Women admits "mature students" on the basis of the GED, with the general understanding that the student's normal class must have graduated from high school. Students applying at Mississippi Valley State University who take the GED can include those who are at least 20 as well as students whose high school educations have been interrupted and who are the age at which they ordinarily would have finished high school.

Two universities, Alcorn State University and Mississippi Valley State University, state that students must submit a $5.00 application fee. Alcorn State University applies this fee toward the student's registration fees; Mississippi Valley State University does not.

Specific ACT Score Requirements

Alcorn State University—Requires students to take the ACT, no minimum score given for resident or non-resident students

Delta State University—(1) Resident students must take the ACT and submit a minimum composite standard score of 15. (2) Non-resident students must take the ACT and

submit a minimum composite standard score of 20; (3) Resident students whose composite standard score is 12, 13, or 14 may be admitted on a provisional basis during the summer session; (4) Students admitted by examination (GED) must also submit the required ACT scores.

Jackson State University—(1) High school seniors who list the University as their first, second, or third choice on the ACT profile and whose composite score is 15 or above are given conditional admission without having to file the traditional application form or having their high school transcripts sent to the University; (2) High school seniors who do not list the University as their first, second, or third choice and whose composite ACT score is 15 or above are given conditional admission without filing application forms or sending their high school transcripts to the University; (3) Students may be admitted on an unconditional basis with ACT scores and certification of high school graduation; (4) Students who do not have ACT scores sent to the University and those whose composite standard score is below 15 must submit the traditional application forms and high school transcripts before being admitted; (5) Catalogue indicates that the University will also accept SAT scores, no minimum given.

Mississippi State University—(1) Requires students to take the ACT and submit minimum scores of 15 for resident and 20 for non-resident students. Some non-resident students may be admitted on a score of less than 20 in the case of scholarships; (2) Students may be admitted with a minimum ACT score of 13 for special summer school admission and must maintain a C average in any courses for which they register during the summer; (3) Students admitted by examination (GED) must also meet all other admission requirements.

Mississippi University for Women—Requires students to take either the ACT or the SAT and submit satisfactory

scores. Officials at MUW add that a regression equation is used for admission purposes. This equation developed for MUW, uses the student's high school grade point average on academic subjects only, the ACT composite (SAT scores are converted to equivalent ACT scores), and the norms established by previous freshmen. A student with a predicted grade average of 65 or above is accepted for admission.

Mississippi Valley State University—(1) Requires students to take the ACT, no minimum score given for resident or non-resident students; (2) Students admitted by examination (GED) must also submit the required ACT scores.

University of Mississippi—(1) Requires resident students to submit a minimum composite standard score of 15 on the ACT or 680 total on the SAT. Students admitted on the basis of SAT scores must take the ACT during fall Orientation; (2) Requires non-resident students to submit a minimum composite standard ACT score of 20 or 870 on the SAT. Students admitted on the basis of SAT scores must take the ACT during fall Orientation; (3) Students receiving the Non-Resident Alumni Awards are admitted under the requirements for resident students.

University of Southern Mississippi—(1) Resident students must take the ACT and submit a minimum composite score of 15; (2) Non-resident students must take the ACT and submit a minimum composite score of 20; (3) Students admitted by examination (GED) must meet all other University admission requirements.

Proposed Stipulation No. 683:

Exhibit US-351, labeled "Admissions and Academic Scholarships", provides accurate information on the standards for freshmen admission at Delta State University in 1974-75.

RESPONSE

Stipulated.

UNITED STATES' EXHIBIT 351

ADMISSIONS AND ACADEMIC SCHOLARSHIPS

ADMISSION OF FRESHMEN

A candidate for admission to the freshmen class must submit the results of the American College Test, be a graduate of an accredited high school, and offer fifteen acceptable units of credit.

If the applicant has an ACT composite score of 15 or above and is a resident of Mississippi and meets all other entrance requirements, he may be accepted for admission. An applicant from Mississippi whose score is 12, 13, or 14 may be accepted for provisional admission in the summer session.

The fifteen units of credit must include three units in English, two units in mathematics and two units in social studies. In certain special cases one unit in mathematics may be waived.

ADMISSION OF JUNIOR COLLEGE TRANSFERS

A student enrolled in a junior college for the first two years who has maintained a satisfactory average will be admitted to Delta State University.

A junior college graduate who transfers to Delta State University and who has pursued a sound academic program in the junior has no difficulty in meeting the necessary additional 64 semester hours required for graduation in two academic years.

ADVANCED CREDIT FOR AN ENTERING FRESHMAN BASED UPON THE AMERICAN COLLEGE TEST (ACT)

A student who has a standard composite score of 25 or above may be eligible for advanced credit. The credit may

be awarded in each subject matter area where the score is at least 25. Details are to be worked out in conference with the student and the Dean of the University.

ACADEMIC SCHOLARSHIPS

Entering Freshmen: Delta State University awards academic scholarships to all entering freshmen who have a standard composite score of 26 or above on the American College Test (ACT). The value of the scholarships range from $400 to $1,200. Corresponding academic scholarships are awarded to Salutatorians and Valedictorians.

Junior College Transfers

Junior College transfers who are members of Phi Theta Kappa receive scholarships ranging from $200 to $600.

NONDISCRIMINATION

Delta State University has filed an Assurance Compliance (No. 34-0090) in regard to its policies and practices concerning the treatment of students and does not discriminate in its admission or other policies on the grounds of race, color, sex, or national origin.

For further information contact:
Director of Admissions
Delta State University
Cleveland, MS 38732

EXHIBIT 913

Proposed Stipulation No. 685:

Exhibit US-057, labeled "Admission Standards and Procedure [*sic*] for the Three Doctoral Universities for Students with an ACT Less Than 15", provides accurate data on admissions requirements at the University of Mississippi, Mississippi State University and the University of Southern Mississippi as of 1976.

RESPONSE

Stipulated.

UNITED STATES' EXHIBIT 057

ADMISSION STANDARDS AND PROCEDURE FOR THE THREE DOCTORAL UNIVERSITIES FOR STUDENTS WITH AN ACT LESS THAN 15 (1976)

Mississippi State University

1. Students with 13 and 14 ACT scores may be admitted in the summer session on probation status. These students must adhere to the regular academic retention procedure.
2. Special Services Program. These programs are entered into with the Federal government. Students are permitted who have low standardized test scores with a high capacity to catch up on their academic deficiencies. These students generally have one year to prove their capabilities. They are financially deprived and receive assistance, not only financial but also special tutors and educational counselors.
3. Athletes are not provided any special consideration other than the two programs mentioned.

University of Mississippi

Mississippi residents can be accepted at the University on a probationary admission if the ACT composite is a 13 or 14. Below 13 ACT composite score, the holders may petition for a special review to see if an exception can be made for a probationary admission. All of this procedure is accomplished by the University's Committee on Admissions.

No special provisions are made for athletes.

Non-resident students may be permitted probationary admission provided the ACT composite score is between 15 and 19 and admission in good standing

with a composite of 20. If the score is below 15, the student may petition for admission.

University of Southern Mississippi

1. During the summer quarter students with 12, 13 and 14 ACT scores are admitted and most make a "C" average during that quarter in order to continue during the fall quarter.
2. Special Services Programs are similar to those discussed in Item 2 of Mississippi State University.

UNITED STATES' EXHIBIT 920

UNIVERSITY OF SOUTHERN MISSISSIPPI
BULLETIN

[SEAL OMITTED]

GENERAL CATALOG ISSUE
UNDERGRADUATE PROGRAMS
ANNOUNCEMENTS
1986-87

FALL SEMESTER OPENS AUGUST 27, 1986

University of Southern Mississippi Bulletin USPS-652-260
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Volume 73 **Number 2**

(Published December 1, 1985)

ADMISSION REQUIREMENTS AND PROCEDURES

All communications regarding entrance to the **undergraduate** colleges and schools of the University should be addressed to the Office of Admissions and Records, University Southern Mississippi, Southern Station, Box 5011, Hattiesburg, MS 39406-5011.

Eligibility for admission will be determined when the application, ACT score, and scholastic records have been submitted. These items should be received before the deadline date of the semester for which the student is applying (see Calendar). The academic record, character, and conditions of application of the applicant must be in accordance with the rules and regulations of the Board of Trustees of State Institutions of Higher Learning and with the laws of the State of Mississippi. The applicant must have excellent moral character and must be willing to conduct his or her affairs so as to be a credit to the University. The University reserves the right to cancel the admission or registration of an individual whose attendance at the University, in the opinion of the appropriate administrative officer and the President, would not be mutually beneficial to himself or herself and to the institution. Any undergraduate applicant who is denied admission to the University may have his or her case reviewed by the Undergraduate Committee for Admissions and Credits. To initiate the review procedure, the student should contact the Office of Admissions and Records. Applicants should note carefully the law governing legal residence and the penalty for falsifying residence information. The law appears in the STUDENT EXPENSES Section of this **Bulletin. The University of Southern Mississippi does not discriminate on grounds of sex, race, color, religion, or national origin. These provisions also apply to handicapped individuals pursuant to current federal and**

state regulations subject to reasonable standards of admission and employment. All inquiries concerning discrimination should be referred to The President's Executive Assistant, Room 108, Administration Building, University of Southern Mississippi, Hattiesburg, Mississippi 39406-5177

All inquiries concerning admission to the University should be addressed to the Office of Admissions and Records, Southern Station Box 5011, Hattiesburg, MS 39406-5011.

ORIENTATION AND PREREGISTRATION: FALL SEMESTER

New fall freshmen and transfer students entering the University of Southern Mississippi are encouraged to participate in the summer orientation program, Mini-Quarter. The USM Mini-Quarter is designed to acquaint students with University structure, policies, procedures, physical layout, faculty, students, organizations, and academic programs. Activities scheduled during the program include the following: evaluation of credit for transfer students, placement testing, academic advisement, small group sessions, open house for organizations, scheduling of classes, and registration. Students pay fees when they return to campus in the fall.

Parents of freshmen are also invited to attend the summer orientation program. Special sessions planned for parents include discussions about University policies, including finances, housing, student activities, educational and recreational opportunities, and academic programs.

EARLY ADMISSION

The University will admit a limited number of highly qualified applicants after completion of the junior year of high school. To be considered for early admission, the applicant must have achieved an exceptional record on a

minimum of fifteen (15) units in an accredited high school, have the unqualified recommendation of his or her principal or headmaster, and have achieved a score of twenty-four (24) on the American College Test. A personal interview through the Office of Admissions and Records is required before a decision is made.

ADMISSION BY EXAMINATION

A student who has not been graduated from high school may be admitted if he or she achieves a standard score of forty (40) on each of the five tests or an average standard score of forty-five (45) on all five tests of the high-school level General Educational Development Tests and attain a minimum ACT composite score of twenty-four (24). The applicant must provide evidence that a high school equivalency certificate has been issued. The applicant should request the State Department of Education of the state which issued the certificate to provide an official transcript of the GED. The University does not award credit for the General Educational Development Tests, College Level.

ADVISEMENT

All new students are assigned to academic advisers and are given specific times to meet with their advisers for assistance in scheduling classes and planning programs of study to meet their individual needs. Assignment of advisers is based on the student's stated educational or career plans. Those students who have not established definite educational or career plans are assigned to advisers in the College of Liberal Arts. The Office of Recruitment and Orientation provides a program of academic and career counseling for prospective students of the University.

APPLICATION PROCEDURES FOR FRESHMEN

HOW TO APPLY

Each entering freshman applicant is required to:

1. Present an application for admission.
2. Submit, beginning with the fall term of 1986, an official high school transcript which states the date of graduation and which indicates credit in the following high school units in grades 9-12:

Subject	Units
English	4—All must require substantial writing components.
Mathematics	3—Algebra I, Geometry, and Algebra II.
Sciences	3—Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of those chosen must be laboratory based.
Social Sciences	2½—Must include United States History and American Government.
Required Elective	1—Choose from a foreign language or mathematics or a science [chosen from the science courses shown above].

It is recommended that students also pursue two units of foreign languages, a unit mathematics and a computer science course during their senior year, and gain a level of typing proficiency.

A minimum ACT composite score of 15 is required for admission.

Any student with an ACT composite score of 24 or above is exempt from the Board's high school units requirement.

For the Fall, 1986, Semester and the Spring, 1987. Semester only, any student whose ACT composite score is between 15 and 23 may be allowed to enter with a maximum of three (3) deficiencies, one of which must be exempted with an 18 ACT subtest score in the appropriate area.

By Board policy, students allowed to enter the University with deferrals must pass a specified course(s) in the area(s) of the deferral(s) during their first term of enrollment. Failure to pass the specified course(s) during the restricted time period will result in dismissal from the University.

When the application, transcript, and ACT results have been received, the Office of Admissions and Records will inform the applicant of his or her admission status. If the student applies early in his or her senior year, a notice of admission status is issued as soon as evaluation is completed. In addition to students admitted with a fifteen (15) composite score on the ACT, the University may enroll a number equivalent to five (5) percent of the previous year's freshman class enrollees or fifty (50) students (for summer, fall, and spring terms) to accommodate talented and/or high risk students with an ACT composite score of nine (9) and up to the current minimum admissions standards.

WHEN TO APPLY

A high school student, especially one who is also applying for financial aid, is urged to apply for admission early in his or her senior year. The applicant should have his or her high school mail to the Office of Admissions and Records a transcript complete for his or her first six semesters. A student who applies during his or her final senior semester should provide a transcript complete for

the first seven semesters. The deadline for receipt of applications and all required credentials, including results of the American College Test, is twenty (20) days in advance of the session for which the application is being made. An application is processed as soon as possible after all required items are available. A notification of admission is then issued to the admissable student.

TRANSFER STUDENTS

HOW TO APPLY

Each new student who has attended other colleges or universities and who is seeking admission to an undergraduate college or school is required to file with the Office of Admissions and Records an application for admission (form to be obtained from that office). He or she should also request the authorities at each institution attended to send an official transcript of his or her record to the Office of Admissions and Records. The student who is applying with fewer than twenty-four (24) semester hours of college credit acceptable by this University must also have sent to the Office of Admissions and Records an official high school transcript showing the date of graduation. The applicant must also provide an official report of the American College Test scores directly from the testing service. Applications will be processed and admission status determined when all required items, including the ACT where applicable, are on file.

Any prospective transfer students who have achieved all of the standards as specified by the Board of Trustees for admission to the universities under the governance of the Board of Trustees but who choose to attend an institution not under the governance of the Board of Trustees may transfer at any time to an institution under the Board of

Trustees. This does not alter individual institutional requirements regarding transfer students.

Any student whose ACT composite score is below an institution's minimum required score and who has not been selected as a high risk student by the institution must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a C average (2.0 GPA on a 4.0 scale) in the following twenty-four (24) semester credit hours.

6 semester hours English Composition
3 semester hours College Algebra or above
6 semester hours Laboratory Science
9 semester hours Transferable Electives

The applicant also must show that he or she has earned an overall GPA of 2.0 on all course work attempted. Developmental courses in English, mathematics, and reading will not be accepted for transfer credit, or will the grades and hours be used in computation of the individual GPA for admission to the University.

Transfer students may be accepted from other institutions of higher learning only when the program of the transferring institution is acceptable to the receiving institution, the program of studies completed by the student meets the requirements established above, and the quality of work performed by the student is acceptable to the Board of Trustees. The authorities at the institutions under the jurisdiction of this Board are authorized to require acceptable scores on recognized tests for such transfer students. No student seeking to transfer during the midst of the session, quarter, semester, or trimester of the institution in which he or she is currently enrolled can be considered.

A student currently enrolled in another institution at the time he or she makes application for admission for the

following session to one of the undergraduate colleges or schools of this University should arrange to have forwarded to the Office of Admissions and Records an official transcript which includes a listing of courses in progress as well as all completed work. Transfer credit is accepted only from institutions of higher learning which are accredited by a regional accrediting agency or the Mississippi Association of Colleges.

The student must indicate on the application all previous college attendance. An applicant is not permitted to ignore previous college attendance or enrollment. A student who misrepresents information in filling out the admission application form or a student who finds after admission or enrollment that he or she is ineligible for academic or any other reason to return to his or her last institution and who fails to report this immediately to the Office of Admissions and Records will be subject to disciplinary action, including possible dismissal from the University.

At the discretion of the executive officer, the University may allow a limited number of high risk transfer students to enter who have not met the entire 24-hour transfer requirement. This number shall be no greater than a number equivalent to five percent of the previous year's (for summer, fall, and spring terms) first-time transfer students. Each high risk student must have achieved a minimum of fifteen (15) transferable semester hours, with a minimum grade point average of 2.0 on a 4.0 scale. These fifteen (15) hours must include six (6) hours of English Composition.

WHEN TO APPLY

The application, required credentials, and the ACT results (when applicable) must be on file in the Office of Admissions and Records not less than twenty (20) days in

advance of the session for which application is being made.

ADMISSION PROCEDURE

When the application, all required credentials, and the ACT results (if applicable) have been received, the Office of Admissions and Records will provide the applicant a notice of admission status.

Transferred credit will be evaluated after admission status has been determined. If an evaluation is received prior to registration day, the student should bring it for use during advisement. Otherwise, the student should contact the Office of Admissions and Records upon arrival on campus for the purpose of attaining transfer credit evaluation.

GENERAL TRANSFER REGULATIONS

The University requires a grade average of C in all previous college work. The applications of students whose records do not meet the indicated requirements may be subject to review by the Director of Admissions or the Admissions and Credits Committee.

A student under academic suspension from another college or university may not enter the University of Southern Mississippi during the term of his or her suspension. Upon termination of the suspension period there is no bar to admission if he or she is eligible in other ways.

In general, students under disciplinary suspension are not admitted to the University of Southern Mississippi.

Students from fully accredited institutions ordinarily will be given full credit for work transferred into the University, insofar as the courses taken are the same as, or equivalent to, courses offered in the college or school in which the student enrolls in this institution.

Credits transferred from an accredited junior college will be accepted as determined by the college or school in which the student is enrolled. In accepting junior college credits, no courses will be considered as above sophomore level. Credit earned in institutions which have not been fully accredited is usually accepted on the same basis set by the university designated as the state university of the state in which they are situated. When acceptance of credit on a validation basis is indicated, the student will be required to validate such credit by at least a 2.0 index on his or her first 12 semester hours of residency study here. Examinations for the validation of credit may be required.

UNITED STATES' EXHIBIT 934

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

CIVIL ACTION NO. GC 75-9-K

JAKE AYERS, SR., ET AL., PLAINTIFFS
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

VS.

WILLIAM WINTER, ET AL., DEFENDANTS

DEPOSITION OF F. KENT WYATT, Ph.D.

APPEARANCES:

ALSEE MCDANIEL, ESQUIRE
North Mississippi Rural Legal Services
Post Office Box 858
Greenville, Mississippi 38701

REPRESENTING PLAINTIFFS

DONALD M. LEWIS, ESQUIRE
United States Department of Justice
Civil Rights Division – Education Section
Washington, D.C. 20530

REPRESENTING PLAINTIFF-INTERVENOR

ED DAVIS NOBLE, JR., ESQUIRE
Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205

REPRESENTING DEFENDANTS

Deposition taken at the instance of
the Plaintiff-Intervenor, in W. M.
Kethley Hall, Delta State University,
Cleveland, Mississippi
April 28, 1980, 9:45 A.M.

ALSO PRESENT: LeVern Younger, Paralegal
United States Department of
Justice

[63] * * * * *

students at what level on admissions examinations, at what level were those students likely to be able to do passing work at Delta State, and through that research we found out the students that score below 15 had to have some unusual desire or goal or something else that motivated them if they were going to do passing work. And we feel a real obligation to any student that we take at Delta State that they should, if they apply themselves, be able to graduate and achieve their goal at Delta State. I don't think it's fair to admit a student who has no chance of success, no matter if he puts forth his maximum effort. So that was the reason that we developed the admissions policy. So that is our admissions policy that is established by the board of trustees.

Q. So you no longer have this summer program?

A. No. What happens now, it has to be one of those 50 students, and they can enter in the fall or they can enter in the summer, and it counts as one of our 50.

Q. Do you know if the students who previously had been admitted to Delta State because they had taken the ACT and gotten a score between 12 and 15, but were admitted based on work done in the summer, do you know what percentage of those students were black students?

A. I don't know. Now I can check and see if we have that kind of data, if you want it, but I really don't know. [64] I know some are black and some are white, but I just really don't know. Do you want me to try to get that for you?

Q. If you could check on that.

A. If we have it, I'll be glad for you to have it.

Q. Okay. Would you have any idea whether or not the number of those students who would get into the university because of that summer work would be greater or less than 50?

A. I can tell you this past year it was 60.

Q. It was 60.

A. So it will be a slight reduction for us.

Q. Would you suspect that the change in the admissions criteria would have any adverse impact on your ability to admit black students?

A. No. I don't think it's going to have any significant change for Delta State. We might be 10 students off, but I don't think that would be a breakdown on black and white so that we'd notice it. I think it's going to be pretty virtually the same as what we've had.

Q. At whose initiatives was the admissions policy changed? Is that something that was proposed by the university or something that was voted by the board?

A. It was proposed and voted by the board.

Q. Proposed by the university?

A. No. No. Proposed by the board and voted by the

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UNITED STATES' EXHIBIT 936

DEPOSITION OF THOMAS MEREDITH, EXHIBIT 104

BOARD OF TRUSTEES BY STATE INSTITUTIONS OF HIGHER LEARNING

Non-Approval Action by Board of Trustees On Academic Program Requests January, 1974-August, 1980

Institution	*Date*	*Program*	*Degree*	*Action*
ASU	1/75	Nursing	B.S.	Delay
	8/76 & 1/80	Elementary Education	Ed.S.	Deny
	8/76 & 1/80	Secondary Education	Ed.S.	Deny
	8/77 & 1/80	Communications	B.A.	Deny
	8/77 (Approved 1/80)	Education Psychology	B.S.	Deny
	8/77 & 1/80	Criminal Justice	B.A.	Deny
	1/80	Telecommunications Technology	B.S.	Delay
	1/80	General Science	M.S.	Deny
DSU	8/76	Church Music	B.M.	Deny
	8/76	Community Agency Counseling	M.S.	Deny
	2/77	Community Agency Counseling	M.S.	Defer
	1/78	Environmental Science	B.S.	Delay
	4/78 (Approved 1/80)	Environmental Science	B.S.	Deny
JSU	8/76	Computer Science	Ph.D.	Moratorium*
	8/76	Urban Development	Ph.D.	Moratorium*
	8/76 (Approved 8/79)	Early Childhood Education	Ed.D.	Moratorium*
	2/77	Botany	B.S.	Defer
	2/77	Zoology	B.S.	Defer
	8/77	Statistics	M.A.	Deny
	4/78 (Approved 8/79)	Early Childhood Education	Ed.D.	Delay
	4/78 (Denied 8/79)	Elementary Education	Ed.D.	Delay
	4/78	Reading	Ed.D.	Delay
	4/78 (Denied 8/79)	School Administration	Ed.D.	Delay
	8/79	Pyschology	M.S.	Deny
	8/79	Secondary Education	Ed.D.	Deny

* The Board of Trustees established a moratorium on new doctoral degree programs at its April 15, 1976 meeting. The Board, at its meeting of January 19, 1978, voted to consider lifting the doctoral moratorium at the April 20, 1978 meeting. At the April meeting, the moratorium on Jackson State University's request was lifted, but the Board also voted to delay any action on their request until after the role and scope of the universities had been established.

BOARD OF TRUSTEES BY STATE INSTITUTIONS OF HIGHER LEARNING

Non-Approval Action by Board of Trustees On Academic Program Requests January, 1974-August, 1980

Institution	*Date*	*Program*	*Degree*	*Action*
MSU	8/76	Communications	M.A.	Deny
	8/77	Communications	M.A.	Deny
	8/77	Corrections	B.A.	Deny
	8/78	Forestry	Ph.D.	Moratorium*
MUW	8/76	Home Economics	Ed.D.	Moratorium*
	1/78	Home Economics	Ed.D.	Delay
	4/78	Home Economics	Ed.D.	Moratorium*
MVSU	8/77	Recreation	B.A.	Deny
	8/77	Special Education	B.S.	Deny
USM	1/78	Public Administration	M.P.A.	Deny
	8/80	Child Development	2 year	Deny
	8/80	School Lunch Management	2 year	Deny

* The Board of Trustees established a moratorium on new doctoral degree programs at its April 15, 1976 meeting. The Board, at its meeting of January 19, 1978, voted to consider lifting the doctoral moratorium at the April 20, 1978 meeting. At the April meeting, the moratorium on Jackson State University's request was lifted, but the Board also voted to delay any action on their request until after the role and scope of the universities had been established.

[35] **UNITED STATES' EXHIBIT 937**
Deposition Testimony of Dr. James W. Strobel

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Q. Does that set forth the new admissions requirements that you were referring to just now?

A. This action is an MUW response to our own admissions' standards and policies.

Q. I see.

A. The actions that we were referring to track this. In other words, they are the same for this institution; but it went. . . the Board action went into other universities as well as the "W" in terms of redefining and updating [36] admissions standards.

Q. Perhaps you can clarify this for me. This is action taken in March of 1979—

A. Um-hmm.

Q. —by *MSW* with regards to its admissions requirements?

A. Right. And in essence it is a reaffirmation by the institution of the expectation through Board minutes that already existed for MUW. In other words, the "W" has been expected to be at ACT minimum of 15 which this reaffirms.

Q. For how long? How long was that expectation in existence?

A. I would have to get all the minutes out, but probably for several years.

Q. I see.

A. This action reaffirmed our commitment to the admission standards and the quality of the student body as an administrative action resulting from our task force for advancement which was comprised of students, alumnae, faculty, administrators that worked for a year on the future of the institution. So, this states our admission

standards and is approved by the Board of Trustees. Each university, as you probably know, has the option of operating admission standards as they choose to do so if approved by the Board if [37] they are not below the minimum set by the Board. For example, the Board has a minimum requirement for baccalaureate nursing of 18 which falls the case for all the institutions that have nursing programs. So, we might wish to recommend a ACT of 20 at the "W"; and if we did so and decided to do so, it would require Board approval; but we would have that option to bring that to the Board.

Q. And what is the minimum Board requirement for the "W"?

A. Fifteen with the proviso that I mentioned of 50 students or five percent of the preceding freshman class eligible for admission under 15 down to the ACT of 12 as this policy defines.

Q. Now, in reading the task force report, I got the impression that this was not the practice at the "W" for the years preceding that statement? Is that true?

A. Yes.

Q. Can you explain? I'm somewhat confused. It appear that the Board of Trustees had a minimum of 15, but the 'W" was not enforcing that minimum?

A. That's correct, essentially.

Q. Was this situation part of what the Plan talks about in terms of accepting students whose credentials don't meet the strict admission standards of the University?

A. Which Plan?

[38] Q. The Plan of Compliance of 1974.

A. I don't know. I don't know the answer to that question.

Q. I'm trying to understand how the situation came

about. For a period of years past the Board set minimum requirements for the various institutions. Did it reaffirm those requirements in 1979? What happened in 1979 that motivated the "W"–

A. Well, as we state in our initial paragraph, a year of intensive self-analysis including an analysis of our student profile: Who they are. What their success rates really are, and whatever, as set forth there preceded this reaffirmation of our commitment to our policy on admissions.

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[72] **UNITED STATES' EXHIBIT 943**
Deposition Testimony of Dr. John A. Peoples, Jr. (11/25/86)

A. Well, obviously the funds were never sufficient to do all the things proposed in here. What I did was to go out and seek funds from outside agencies and I received considerable funding, as the record will show, from foundations and the federal government to move Jackson State ahead as well as we could.

We did apply for accreditation from the American Assembly of Schools of Business and we got two Kellogg foundation grants. The reason we could never get accreditation is because we had no building, we couldn't house the program. So when the consultants came down and said you have a find program going here and you've done quite well in building up your faculty and your program, but you don't have a building and so this building is not – what you a have here is inadequate for accreditation. So we never got accreditation while I was there because we never was able to adequately house a program to the satisfaction of the accrediting body.

Q. Dr. Peoples, I'm going to ask you this. Do you sense a serious – on that point, do you sense a serious flow of racism in not allowing you business – not allowing you adequate funds and resources for business? Because I recall, and this is a statement that Dr. Cooly and many other people were eminent in their field and if you're going to help blacks, if you're going to be an urban university, ain't no [73] way in the world you can build an urban university without a business school. So I'm asking you, what – I mean during this period, –

A. Well, –

* * * * *

[74] Q. Dr. Peoples, it's been objected to race and

racism, but this case is about race, as far as I'm concerned. I might ask you again, isn't it—could you give us on this record for the judge the reasons, whether pretentious or otherwise, that the College Board refused to give you adequate resources to get your business school off the ground? That's the first one. I guess the second question is how can you be an urban university without a business school that's accredited and flourishing?

A. Well, the College Board promulgates its list of priorities for capital outlay each year and, on the basis of their own, I guess, deliberations, they arrive at a listing of priorities, number 1, 2, 3, 4, down.

Q. Do you submit it? Do they—

A. No. Each president submits his request for capital outlay items listing them by priority. Now, although I may have this School of Business building as number one, when the College Board receives from all of the other eight institutions their requests and they have numbers one, two, three, their priorities, then the College Board arrives at its own listing of priorities and, whereas the School of [75] Business may be number one on my list, it may be number 25 on the College Board's list of priorities. So I was never able to get this School of Business edifice up into the top ten items of the Board's priorities and so, consequently, when the Board submitted its list to the state legislature, it never included at a high level of priority Jackson State's School of Business.

Q. And I'm asking you, I mean, is there a serious flow of racism there and, if you don't know, you don't know; but from 1974 this plan has May 28, 1974. Your employment was separated, at least from Jackson State, 1984. That's ten years. Now, in this plan, it say the Board has approved—well, before we get to that, the top priority say Jackson State University will initiate efforts to obtain

accreditation in its business curriculum and et cetera. You've testified here that most all that was completed, but you couldn't get your school accredited because of, among other things, a building.

A. That's right.

Q. And I'm saying that was ten years and, during that whole process, you—I mean, did you ever withdraw business from being a priority?

A. No. It was number one with us. As I told you, we went out and got extra funds from foundations in order to hire faculty. So we were able to hire faculty. Now, the [76] foundations assume that your state is going to pick this up, said we're going to give you a grant for three years and we expect the state to pick this up at the end of three years and carry this forth. I said, well, yes, I think they will, since this is one of their priorities. Now, we got two consecutive grants from the Kellogg Foundation, but there was never a time in which we got anything above the ordinary especially for the School of Business from the College Board. They just gave us our regular appropriation and we decide how we're going to use it.

Now, as regards the building for the School of Business, it was on the list of my requests, I would say, every year on up to the time I left there. It never got top priority from the Board, so we never got any appropriation. They never went to the legislature and sought it for Jackson State.

Now, toward the end of my tenure, the last five years, the Board became restrictive on presidents lobbying. In the early years, presidents were allowed to go before and make contacts with legislators. Now the College Board passed a regulation which said that the College Board will publish, promulgate it's list of priorities and that the presidents are hereby instructed to abide by this list of priorities and they will not contact any state officials, the

governor, the legislators, without permission or going through the College [77] Board. So we were not able, at least during those, say that last five years of my tenure there, last two years of it, to go and lobby as I had done for that Assembly Building and the science building and the library and all that stuff we had gotten in those other years. So I was handicapped. I had to just go by what the College Board put out and it was very dangerous. You're liable to be fired if you go– but I did anyway, but the point was you could not go out there and lobby.

Q. Dr. Peoples, this question may be mixed because I am at the Plan of Compliance and implementation, maybe it's not mixed, but I'm asking you on this record for the court in this case, I contend that Ayers plaintiffs have contended all along that all of this was just racial discrimination, but I'm asking you point blank how can Jackson State carry out any Urban Mission in Mississippi, the poorest state in the nation, without an adequate business school? I want to know how you can perform that mission exclusive of a business school that's viable?

A. Well, unless they gave you some other programs. Now, if it's–certainly in an urban center such as Jackson, which is the banking center of Mississippi and which is the major shopping area in which–and you have all of these industries around here, there is certainly a need for people adequately trained in the various facets of business and economics.

[78] Q. Isn't that the number one priority in terms of the black community?

A. It's certainly one of the principal areas where blacks have been underrepresented. Say in accounting, fields of that sort, blacks have been underrepresented. One of the things we did in the School of Business that we had–with what we had was to emphasize our students

passing the CPA examination. So I told our deans of the Schools of Business that I want you–I said to them I'm embarrassed. I'm embarrassed that we don't have a single graduate who is a CPA and I want you to make this your prime priority, to get some CPAs out. So what we did was to beef up the curriculum and put into the curriculum mathematics through the calculus for the people in the School of Business, not just basic math.

Q. Did you get any?

A. Oh, yes.

Q. How many?

A I don't know how many are out there now, but we broke through that barrier, oh, possibly, oh, maybe eight years ago. We had had one or two to struggle through, but they -but my point was we wanted them to get out there en masse. I was tired of looking up there and seeing Delta State may get ten CPAs, we'd only get one. What's wrong? Something is wrong. So it was a matter of we had a weak curriculum and we had poor faculty, which we hadn't had. So what I did was I got outside [89] white outstanding faculty that they want to bring to their institution, the College Board's rules will allow them to do so if they can justify it in terms of here's a person who is qualified, he's outstanding, we need this person, we'd like to pay him $50,000 and make him a distinguished professor and so on, they can do it.

Q. Dr. Peoples, now we are at January, 1975 and Ayers versus Allain has been filed. I'll skip now to I think 1980-81 and I think the appropriate starting point would be the Mission Statement. No, I need to start before then. Well, the mission, when was–may I ask you when Jackson State received its Urban Mission? Was that with the Mission Statement?

A. No. We had it before the Mission Statement.

Q. Could we start with–I want to emphasize the Mission Statement and come forward, but could you start first with the Jackson State Urban Mission and the formulation

of that leading to the Mission Statement, please?

A. Yes. Well, I would say at least a year, maybe two years before the College Board put out its Mission Statements, I submitted to the Board a proposal that Jackson State University be considered an urban university. I did this in an—for two reasons, one, because of our urban location, I felt it was appropriate and it would help us in trying to exploit our location and, two, there had been introduced in [90] the United States Congress a bill called the Urban Grant, the Urban Grant Bill, which was going to be somewhat analogous to Land Grant; and that was a proposal that there would be established in each state at least one and possibly two Urban Grant institutions and they would receive, on an annual basis, funds from the federal government to do research in urban situations on the same basis as the Land Grant schools do research in support for farms and so on.

Q. Stop there. But do you know under what senator or what house or what was that bill, who shared that one?

A. No, because we're going back too far, but copies of the bill were in my file at Jackson State and I don't know where they are; but anyway, I took a copy of this bill to the Board, showed them what I was proposing and said that we would like to be in position to be for Mississippi the Urban Grant school. I went to at that time Representative Cochran and made him aware of it to bird-dog the bill and I went to Senator Stennis, you know, and said that we want to be sure that Jackson State is the Urban Grant school and then I proposed to the College Board how Jackson State's curriculum may be oriented toward becoming an Urban Grant school. I said we're going to have to do research in urban problems. I got a grant from the Mott Foundation to establish at Jackson State the Center for Urban Research. This is before the Mission

Statements ever came about. And I proposed to the College [91] Board that Jackson State be given several degrees. One degree I said would be the Doctor of Education in the administration and teaching of urban schools based upon the assumption that we would train these administration teachers to be principals and teachers in centers, say, in New York, Chicago, be at New Orleans or Jackson, where you have a lot of problems in trying to administer schools in an urban community.

Q. You said three degrees.

A. The other one, I said since we are located in the communications center of Mississippi, having the three major TV outlets and having the ETV authority, that—and I asked for the Master's and Ph.D. Degree in communications and then the other one was the Master's Degree in social work. I said, since at that time the Board had not given anybody through any Mission Statement the social work program, the Master's in social work, so we asked for a Master's in social work since Jackson would be the natural laboratory for social work and—

Q. Did you get these?

A. But even—and I went further. I said to do this, we need to have built into the formula some way to give us the funds for funding all of these. So therefore, the formula needs to be changed because Jackson State has to compete, say, in Jackson for staff. We lose—we are just a training ground for secretaries. Every time we get somebody trained, they're taken away by the people in Jackson, businesses in [92] Jackson. So I asked them to change the formula to put in factors which would give us the extra funding needed to be an urban university and the Board agreed to one phase of that. They agreed that we could be called an urban university, but not in the formal sense. They did later on—and they did make one change,

that they agreed to give us—there's a research factor in the formula to put us on the basis of receiving money for research. I think it was about three percent of your instruction would be used for research. So we got that. Now, later on, when the Board began to develop its Mission Statements, Jackson State was given the formal designation urban university without any of those programs that I had asked for. They just said urban university.

Q. Who got social work?

A. The University of Southern Mississippi.

Q. Why didn't you get social work?

A. I don't know. All I know is that we didn't get it. I asked for it.

Q. Did you ask before they asked?

A. Probably simultaneously. I don't know when they asked. I'd have to take that out. I don't know when they—because, see, Mississippi State asked, Southern asked, Ole Miss asked, all of us were asking.

Q. But they hadn't acted at the time or—In other words, when you went there, they had not said social work goes [93] to Southern Mississippi?

A. Well, see, the Board had not, until the Mission Statements, decided to give a so-called lead. All of us had small programs. We had a Bachelor of Science Degree in social work, but not the Master's Degree. The Board had not decided to give a school the lead. So the Mission Statements gave institutions the lead and said the Board is going to give you the leeway to move on to excellence in this area and get a Ph.D.

Q. Did they give you the lead in anything?

A. No.

Q. Did they give any black school the lead in anything?

A. I'm not aware of any lead or—they just said we're the urban university.

Q. What was the Mission Statement to you? Was the Mission Statement advantageous to black schools or disadvantageous?

A. I won't talk about the black schools. I'll talk about Jackson State. The Mission Statement, as given to Jackson State, said we were the urban university. Now, when the question was put as to whether or not we would have any specific programs or leadership roles, I was told to come forth with programs and they will consider them.

Q. But you already submitted programs.

A. Well, I came forth again.

[94] Q. What, if anything, occurred?

A. I came,—well, I came forth again with this proposal.

Q. That is the program and Ph.D. in education, Ph.D. and Master's in communication and the social work Master's?

A. Right.

Q. Was it any other program?

A. I think I was asked one day to stand before the Board and I told them that again verbally, but at any rate, none of those were approved.

Q. Dr. Peoples, I don't know what an urban university is. What is an urban university and what is Jackson State?

A. It was very firm in my mind what it was.

Q. Could you tell us?

A. I went so far to tell you right now that I conceived an urban university as a university which provides education and service to an urban community and Jackson, Mississippi and its environs, that is metropolitan Jackson, is the only truly urban center in Mississippi; and I conceived of it as providing research and service.

Now, what we did, here are the steps we took. I went to the school superintendent, Dr. Fortenberry, and signed

with him an agreement, a memorandum of understanding, to provide research and service to the school system anticipating that the Board was going to approve of this degree program and [95] anticipating that they pass that legislation. I went to the County of Hinds, sat down with the supervisors, signed a memorandum of understanding which was anticipating that we were going to be an urban university with the programs that serve it. I went to Packard-General Motors. Packard-General Motors, they agreed to allow Jackson State to use their facilities to upgrade, help upgrade their workers in the fields of business and technology and they would even—they even went so far as to provide the teachers, that we'll let you use our engineers to do the teaching if you will certify them as teachers.

Now, when that proposal went before the Board staff, they said that Jackson State needs to stay on its cam[illegible] and we didn't have permission to go off the campus t[illegible] any teaching at all.

Q. Doesn't other schools go off campus?

A. I'm just telling you what they told me. So when we did that—well, anyway, they agreed to come on our campus and do the teaching. I'm telling you that we were trying to be the urban university. I was doing this on my own. And so there in Jackson State's files right now, if they can find them, these MOUs, that memorandum of understanding or agreements with Jackson Public Schools, the County of Hinds and you know about the lost laboratory thing—

Q. No, sir. I don't know about loss, I don't know about [96] computer science, I don't know about nothing.

A. Well, I won't try to get too far because I'm just trying to tell you—

Q. I want to know what an—Dr. Peoples, I have to

say this. I have to. Each time we, and we is the plaintiffs in Ayers or black Mississippians Council for Higher Education, go to the Board of Trustees and we ask for definition, they act like they have amnesia, I'll say on this record, or they just don't know. I—We've asked on countless occasions about the business school at Jackson State and, well, they can carry their Urban Mission without a business school. Well, we don't fund—Barlow specifically stated on several occasions he did not know what an urban university was. He was the one. So I'm asking you on this record so Judge—whoever tries this case, the Court of Appeals, will know what was envisioned in an urban university. Because, as I understood it, there was something about computer science, you're talking about—

A I was about to say for computer science, we got an agreement with Bell Laboratories in Manville, Illinois to help upgrade our computer science program, that they'd bear the fruits of that right now and I went up there and talked with them and they agreed not only to hire our graduates, but to provide for us professors for free and they would equip our laboratories and they have them out there right now, I think, and they would also agree to put us on the list of favored [97] schools, although we were not—they normally put schools with engineering degrees on that list, but after I talked with them, they said that they would put our computer science program on the same basis as engineering; and so through the agreement with Bell Lab, which is a part of AT&T, this is all part of my efforts to build up this urban university. So computer science, business, IBM agreed to provide us free business professors.

Another aspect of this also, there was no meteorology program in the entire state. So I went to the National Weather Service and asked if they would help us. I went

back to the College Board. They said yes. The College Board agreed that we could have Bachelor's Degree in meteorology. The National Weather Service, which is NOAA, is the acronym for it, provided us, over a five year period, up to two professors in meteorology with the anticipation that the state would take it over and keep the program going after they withdrew their people. So we gave out some degrees in meteorology. Now, when the professors dried up and NOAA said well, look, when is the state going to take it over, well, the state never did give us no money for it and so—

Q. Who's doing meteor—

A. Meteorology?

Q. Who's doing meteorology now?

A. I don't know. I think it's dead. I don't really [98] know. All I know is that, in trying to build an urban university, I was trying to get programs in which blacks had been underrepresented, which would help black students in an area such as Jackson to be viable participants in the various fields. So I was trying to tell you what I conceived of as an urban university, which had viable programs and which, when students get their degrees, they can become contributing citizens in this area.

Q. Well, Dr. Peoples, I heard last Saturday from one of your—one of Jackson State's alumni and they were upset and made a statement that Jackson State computer science program, and I think they say data processing, I'm not sure, computer science, data processing, same, but say, when you came to Jackson State in 1967 and during that early period, that Jackson State computer science was among the best in the state and that there was only two computers of its type, I don't know what that is, in the state or in Jackson in the early years. Is that—Could you direct me in the right direction? Did you have an early

computer science or data processing and, if so, was it of great quality and where is it now among—

A. Well, I certainly wouldn't go so far as to say that we were the best. As a matter of fact, when we started off, we were at a very low ebb. We didn't have a degree program. We had—what we had was a Bachelor of Science in mathematics with a minor in computer science.

[99] Q. When was that?

A. That's when I first went there.

Q. In the 60s?

A. 67.

Q. Okay.

A. We moved the program to a degree program I think within a period of maybe a couple years. We offered a Bachelor of Science degree in computer science and—

Q. That was in the 60s though?

A. No. It was in the 70s, early 70s. Now, I had no way of knowing what the other schools were doing. I was trying to build Jackson State and we moved the program ahead by these various things I spoke of, working with IBM. IBM would provide us a free faculty on a year's basis, a free computer scientist. AT&T, through its Bell Laboratories, would provide us free professors and we were able to upgrade the program in that manner. We got some free equipment from AT&T.

It came to the point where among—I know among the smaller institutions—in fact, we got a grant from the National Science Foundation to help upgrade data processing in several institutions including Alcorn, Mississippi Valley, Hinds Junior College and Mississippi College and I believe Millsaps, too. We got a grant which allowed us to bring their staff people in on weekends to train under our computer scientists. So we helped all of them to get started. So we [100] at that time were considered ahead or

at least on par with anybody in the state.

Q. Is that the case—was that the case at the point you parted at Jackson State, and if not, could you—

A. No. At the time—what happened was that with our not—we weren't able to keep up because we didn't have the funds.

Q. Did you request funds?

A. Of course, we asked for funds, but I would say just offhand that Mississippi State has a superior program to Jackson State. They have engineering. See, you've got to support these programs with other programs like engineering and so on. So Mississippi State—we're probably number four now. I would say that Southern's program perhaps has surpassed ours now.

Q. In computer science or what are you—

A. We may be superior to Southern. I take that back. But it would be hard for Jackson State to be ahead of Mississippi State, which has a strong engineering program as well as computer science because these things are interrelated. So it would be very hard. Or the University of Mississippi, because they get—their budgets, as you know, are tremendous and they get a lot of research money that we can't get since we don't have Ph.D. programs. Now, if we could have got a Ph.D. program, you can attract a lot of [101] funds.

Now, Jackson State has a very good program and I would say that, if you were to look at schools its size, you'd be hard pressed to find a school that would be better than Jackson State within its peer group, but when you go to the major universities, no; and so I would guess that we do not have a program as good as Mississippi State or Ole Miss, not at this time.

Q. But the question was in the beginning, you were on par?

A. In the beginning, we were more or less on par. Before they began emphasizing computer science, yes, we were more or less on par, but when it becomes a matter of a hardware, a matter of getting extra funds, getting teachers,—

Q. Well, did you ask for a doctorate in computer science?

A. Yes.

Q. During this—

A. Yes, we did.

Q. And what happened to that request?

A. It just wasn't ever approved.

(Recess)

Q. Dr. Peoples, was Dr. Jesse Lewis one of the preeminent scholars who was associated with your early

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[110] there were students who wanted to enroll in Jackson State that could not enroll because they didn't have any housing?

MR. NOBLE:

Objection, Counsel. You're leading the witness.

MR. CHAMBLISS:

I note it for the record. I'll rephrase the question.

Q. Is it not true, Dr. Peoples, that on diverse years, I guess since 79 or during this period, there were many students that you could not find housing for or the placement or Jackson, whoever's responsible?

MR. NOBLE:

Same objection.

THE WITNESS:

A. I'll say this. At Jackson State, I was able to get, during my administration, two dormitories, one the very second year, in 19—well, I say the very first year, under Governor Paul B. Johnson, we got the first dormitory and I asked for dormitories almost every year thereafter and

we never got another dormitory funded by the state. We got a dormitory funded by HUD, which is the girls' dormitory called the HUD Dormitory. It's the girls' dormitory at Jackson, got that in 1982. So from 67 to 82, I got one dormitory in 67 and one in 82 and the one in 67 was funded by state bonds. The one is 82 was funded by a grant from HUD.

[111] Now, let me go further to say, all during that time after Jackson State began to grow so fast, we improvised. We were housing students four to a room, four to a room, and using those old barracks that were a part of war surplus that we had put up back during the 40s. We eventually tore those barracks down, but we're still using Jones and Sampson, which were both really barracks that had been brick veneered, but we were housing students three and four to a room and I assume they're still doing it.

See, that was always a handicap, when parents came to Jackson State and saw their girls, in particular, sleeping four to a room and no place to put their things. So that was always a handicap, as it perhaps is now, in getting people to come to Jackson State when they can go other places where they have nice dorms.

Q. That's the question. Isn't it true, Dr. Peoples, that you have Jackson—you have other schools that have facilities and they were building during this time and dormitories? I know the University of Mississippi, because I live in Oxford, I know they have empty dorms. I know that. Were these factors ever discussed with the College Board, the inability for Jackson State to remain competitive in terms of getting and retaining students?

A. I always, in my presentation to the Board for additional housing, presented to them the concerns and [112] evidence of our overcrowdedness in terms of how many we're sleeping to a room, our increased enrollment and the

inconvenience of having students cramped up for space and complaints many students, as well as parents, had about their children not having adequate facilities. I always complained about that to the Board in writing as well as verbally to them over the years.

Q. To no avail I would assume?

A. Well, the fact is I got two dorms, one the first year.

Q. State and federal?

A. And one HUD.

Q. Okay. Fine. Directing your attention again to the Mission Statement—well, the previous question I'm not sure I got an answer. Maybe I did, but are you willing then, Dr. Peoples, and I'm just—I just want to be clear. You've given us three factors, admissions, out-of-state tuition and the foreign student crisis. Is there another factor that's called housing or would you not put that—

A. Which caused enrollment decrease?

Q. Yes.

A. Well, the other factor was competition. In the last decade, the historically white schools have recruited high achieving blacks intensely, intensely to the point where Mississippi State has more black students than Mississippi [113] Valley. The same could be said of the University of Southern Mississippi. So whereas we used to be assured of getting—

Q. That's not true now.

A. I don't know about now.

Q. It's declined.

A. Whereas Jackson State always could be assured of getting almost all of the high achieving blacks we went out and recruited and gave scholarships, now it's not an assured thing. When you go after a black kid who may be a Merit scholar or high achieving scholar, he has options all over. In particular, he has offers for scholarships not

only from the white schools here, from all over the country, but in particular, we have intense competition for the high achievers from the intrastate white schools. So that brought about one decrease because as we began to try to get more and more high achievers and less and less low achievers, high achievers were not out there all the time.

Q. But I'm not sure I follow because isn't it a fact, Dr. Peoples, that there's no way in the world you're going to get a Ph.D. from—I'm sorry. There's no way in the world you're going to get a high achiever wanting to major in business come to Jackson State without an accredited business program? Isn't that—I mean, that's a fact. I mean, the competition—isn't competition competition when you're equals?

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[149] Q. But you're urban. What's the difference in a center of excellence and an urban university? I don't understand how a center of excellence gets 3 million dollars, for example, and an urban university—

A. To be sure, on or around 1982 we did go to the Board and manage to get into our budget a request for a special appropriation for the Urban Research Center. That's when I got the appropriation, when I got the grant from the Mott Foundation and they said, now, we're going to give you this grant, but we expect the state to match it, to pick this up. So we set up at Jackson State the Center for Urban Research and then I went to the Board asking for that support and I believe that what really happened is that we just never got [150] any money extra for it. That's all.

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[59] **UNITED STATES' EXHIBIT 944**
Deposition Testimony of Dr. Ernest A. Boykins
9/14/79

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Q. Why do you think that's the case that white students who would go to a traditionally black school would be a commuter—primarily commuter students?

A. Well, I think that this has been a more or less of a pattern of the country, either by design or by choice, that we've segregated ourselves based on where we live. Like I say, here again, by design or by choice, and of course, I think that one of the difficulties is the fact that there might be a—I'm sure that there exists among some white students a [60] fear of living with blacks in a black community, and the fear itself may not necessarily be a necessarily a physical fear. It could be one of a psychological fear of not being able to adjust to a kind of climate that possibly exists. There is a difference—there is a great deal of difference between going to sit in a class with an individual than it is to sit and to go to bed and to live in the same room with an individual. I mean, I don't—there is a difference even if you are the same race, and certainly with a different race, different background, and coming from different behavior patterns, and so forth, I'm certain would be factors that would influence a white student not wanting to live on campus. It has been shown also that most of the white students who do live on campus are students themselves who participate in special programs, athletic programs, marching bands, and things of this nature. Now, this has been our case that the students who have lived on campus are students who are either in the marching band or part of our athletic program.

Q. Is it your feeling that white students are still reluctant to go to schools with predominately black enrollment?

A. Yes. I think there is some reluctancy about it on the part of some white students for many different reasons.

Q. What are those reasons?

A. One reason is the fact that society for many cases, almost traditionally, described black schools themselves as [61] second kinds of—second class citizens; that they are not able to produce a quality product or graduation; they don't have the resources to produce a person itself that can move into the main stream of higher education. Many students themselves, many other-race students, also don't attend because of the fact of the sociological pressures that come from within their peers of attending an institution. So I think in many cases you will find that some students do have a desire but there is a sociological pressure, a peer pressure, coming from within their own community that would prevent them from going, and of course, I would imagine—it's my opinion where I may not be able to document this—that the more liberal a community is, the more apt that a student is able to resist this, whereas a community itself that's conservative would be less apt to resist this kind of pressure from its peers.

Q. Do you think parents and parental choice may be a factor?

A. Certainly.

Q. Would you explain that further?

A. When I use the peer influence, I include parents as a part of this, and of course, tradition plays a great role too in terms as to where students attend college, and of course, most black students themselves are first generation college students and consequently parents themselves in terms of trying to promote a tradition, there is no tradition to [62] promote, because most of them did not go to college. On the other hand, white students themselves traditionally have had access to higher education and they have attended universitites. I mean it's been sort of a family line

here, and so tradition itself is a factor that's involved also. So parents here again, either by design or by choice, certainly have an impact upon students choice of. . .

Q. Are these decisions made based on perceptions of the institution, based on its enrollment, predominately black enrollment?

A. I think—you mean by white students?

Q. Yes.

A. Certainly some decisions are made based on the perceptions that they give to the institution. I mean as they perceive the institution, and I think I've cited some of those perceptions that they have. I think they are false in some cases, but this is a perception that they have.

Q. These are perceptions made from looking at the enrollment of the school?

A. Yes.

Q. And it's predominately black

A. Yes. See, of course now, keep in mind the fact that I really think that the bottom line is going to be a student is going to choose an institution based on its academic offering. See? Now for an example, if a student wants a degree [63] in gerontology and that's the only place where you've got the course in gerontology, that student will, if he wants it bad enough, he will go there. Now, that's the bottom line.

Q. But generally do you think white students still perceive Mississippi Valley for instance as a black school?

A. Oh, certainly.

Q. How about Jackson State?

A. Yes.

Q. And Alcorn State?

A. Alcorn. I mean it's perceived that way not only from the white community but perceived that way from the black community.

Q. We were talking a little bit about projections. Can we get to the faculty projections now? Could you describe how those projections were made?

A. Well, here again I suppose that we took a look, and here again that it was not always a very detailed and a very systematic and scientific process to which we looked. We looked at the areas where we felt that our growth and the availability of the people who have the training that are necessary to fill these various spots, and of course, we tried to go ahead from that point of view based on the people that we had in place already as opposed to the person that we possibly in terms of program expansion or program development that we wanted to bring on. Also another factor that was

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10/4/79

[124] Q. I would like to ask you a few questions about, I guess, what is commonly described as the role and scope or the mission of the university and I was wondering if you could describe to me how you envision the mission of Mississippi Valley State.

A. I think one of the main missions, one of the best objectives of Mississippi Valley is to be able to identify [125] students with potential and desire for higher education and bring them to the highest level which they are able to obtain. I think that should be one of its basic objectives, is to take students regardless as to their level and make a finished product out of them. In addition to this, and I'm not trying to – I don't want to try to formalize this in any jargon or anything – is that I think we have another responsibility in terms of trying to teach students, not only how to make a living, but also how to live. And without going through the – I don't know if you want me to speak to the point of the kind of academic offerings that the institution itself – the course it must take. I don't know, but

I think that generally the institution itself ought to be prepared and have the flexibility to meet the needs of the persons that they are trying to serve.

Q. How does your mission differ from the missions of other universities in the state and even more specifically in the area?

A. Well, I think one reason that we are different – we should be different is because of the first reason I cited, is the fact that we ought to be able to take students regardless as to what level may have been measured in terms of their – the possibility of their participating in higher education, but we should be able to take these students and bring them to a level where they become a finished product and I think that differs from the role and mission of some other institutions.

[126] Q. When you say "some other institutions" what are you referring to?

A. Well, I'm talking about the historically white institutions.

Q. How has your mission changed over the years?

A. Our mission has changed particularly in the diversity of academic offerings. Traditionally or by virtue of its own creation is that it was a teacher college. Of course, that mission has – not that we have not attempted to enrich and to enhance our teacher education because that is a primary – one of our objectives and goals, but we have gone into more diversified areas to be able to better satisfy the job market needs of our constituency, primarily in the areas like business administration, computer science, family and community services, gerontology. And I think there is also a reshifting back to technical education or the technology area. We, for one point in the growth and development of these institutions, had shifted away from the technological phase but now there is a beginning to – a reshifting back to it and, here again, it's the demand in the job market.

Q. Are you referring to just Mississippi Valley now when you're describing these or are you referring to other schools?

A. I'm referring to Mississippi Valley specifically. You asked me how has our mission changed. Right? Yes, I'm referring to Mississippi Valley.

[127] Q. I want you to take a look at a document—

BY MR. LEWIS:

Let me have that marked.

[Exhibit 55 marked.]

Q. [Continuing by Mr. Lewis] I hand you Exhibit 55. I was wondering if you recognize that statement of your role and scope. Part of it is not very legible, but I was wondering if you recognize that statement.

A. Yes, I recognize it.

Q. Could you describe what that statement is and its context.

A. This is—this is, if I recollect properly—recollect accurately, that this is a document that was prepared by the Board staff as it relates to the role and scope of the respective institutions. But it looks like it, sounds like it. This was primarily—most of the information from here was taken out of our Long-Range Plan, if I recollect. I haven't read the entire—but I make reference specifically to paragraphs one, two and three which have been lifted from our projections as it relates to our long-range plan.

Q. We were talking about how your mission differed from other institutions. How does your mission differ from Delta State University?

A. I think that one area is the fact that we deal with more disadvantaged students than Delta State does, and when I [128] talk about "disadvantaged," I'm talking about disadvantaged academically, and I think that's one of the key differences between the universities. We have some

things in common; on the other hand, we have some programs that we think are unique to us, for example, like the whole human ecology concept, that approach, trying to—well, trying to help in solving the problems and bring about more growth and development in the rural areas. These are all offshoots of the human ecology approach.

Q. You refer to disadvantaged students. Are there disadvantaged white students in the region?

A. I'm sure—yes, I'm sure that there are.

Q. Are they more likely to attend Delta State than they are to attend Mississippi Valley?

A. I would think so; here again, by virtue of tradition. I'm just simply speculating that traditionally this is a white institution and this is where I should go.

Q. So the disadvantaged students that you refer to are black student?

A. Primarily, yes. But they make up a major segment of our community, if not the majority of our community.

Q. Do you view as part of your mission to be the dominant university in this region?

A. Well, if you talk about—you want me to—well, how do you—"make dominant" is sort of throwing me for a while [129] here in terms as to. . .

Q. Well, let me background my question this way: I mean there are probably several regions in this state where one institution is the predominant institution in that region; maybe one example could be Southern Mississippi. I was wondering if you, perhaps, viewed a similar role for Mississippi Valley?

A. Well, I like to—I like to think that we could obtain that.

Q. Is it possible?

A. With proper resources, yes. I think it's possible. Financial resources.

Q. Is it possible even though Delta State is 50 miles—40 miles away from you?

A. Yes. If I had the resources that I can be the "University of the Delta," as we now proclaim. It's just a—

Q. Are you in practice—in reality the "University of the Delta"?

A. It depends upon who's looking at us or who's making the evaluation.

Q. Let's say for black students, if black students were making the evaluation.

A. I think the black students would possibly consider us the "University of the Delta."

Q. How about white students?

[130] A. No.

Q. What would they consider you as?

A. They would probably consider—well, they would say Ole Miss spontaneously and then probably come back and say Delta State.

BY MR. LEWIS:

I have no further questions.

[Off Record.]

BY MR. LEWIS:

Why don't you mark these.

[Exhibits 56 and 57 marked.]

Q. [Continuing by Mr. Lewis] Dr. Boykins, could you identify number 56?

A. These are transfer students from junior colleges for the year 1978-79.

Q. Now, when was that information compiled?

A. Today.

Q. Could you take that and initial it.

A. [Witness complies.]

Q. Dr. Boykins, what do you mean now by "transfer students"?

A. These are students who have completed at least one semester at another institution.

Q. I see. And applied for admission here?

A. Right.

[134] A. It will show grants and—yes, like I say, here again, all this is part of that same document.

Q. What is the name of the university—submission to the university—I mean to the Board, rather?

A. What is the name of the document?

Q. Yeah.

A. It's your financial report.

Q. Your financial report?

A. For the end of the fiscal year.

Q. Okay.

A. Which will show that.

Q. And those reports have been made by the University to the Board?

A. Right.

Q. Okay.

A. We make that to the Board of Trustees as well as to the State Budget Commission.

Q. Okay. Now, Dr. Boykins, to follow up what Mr. Lewis was dealing with just before he ended, and that is the whole justification for this institution of education, can the blacks in this state and in this area in your mind receive an equal educational opportunity without the existence and enhancement of historically black institutions?

A. I think—no, in answer to your question. I think that the black institutions, the historically black institutions, [135] are the major vehicle of hope for higher education for most black people.

Q. Why is that?

A. Because that historically—well, first, let me say

that there are many things that will contribute to the success or failure of a student in college other than his academic abilities, and I think that the historically black schools have a history, they have the ability, and they have the climate for students themselves to successfully succeed as a finished product from the higher education marketplace.

Q. Are you implying by your answer that Mississippi Valley and other historically black institutions must continue to attract and train substantial numbers of black students?

A. Yes, and any other students who have that same profile.

Q. What do you mean by "profile"?

A. Well, the—who are in many cases educationally disadvantaged or academically disadvantaged or a student himself who has—the kind of—who desires the kind of atmosphere that an institution like this has. Now, when I talk about atmosphere, I'm specifically speaking to the point that to be able to take a student where she—he or she has developed and make a finished product out of them. This may not be done in four years, but I think that this is one of the uniquenesses that historically black schools themselves have.

[136] Q. Why can't the University of Mississippi do the same thing?

A. Well, I'm not sure if I know the answer to that. I don't think that they have the patience and I think they interpret—their interpretation of a student who is able to succeed in college is different from the historically black schools; that they interpret success or failure based on test scores and rule out or eliminate other things like a—just an enthusiasm or just a desire to have an opportunity, and I don't think—of course, it's hard to quantitate these things, but I don't think that these other institutions have this as part—have this as part of their mission.

Q. You have testified earlier that a majority of your students come from counties which are situated basically in the Delta area in some proximity to the institution. I'd like to just read down the list of these counties and from your knowledge have you indicate what percentage of the population in these counties—the racial breakdown of the population of these counties. Leflore County, where you are situated, is it majority black or white?

A. It's majority black according to the last census figures.

Q. What about Sunflower County?

A. It's majority black also.

Q. What about Humphreys County?

UNITED STATES' EXHIBIT 946

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 75-9-NB

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, ET AL., DEFENDANTS

DEPOSITION OF GEORGE HENRY CARTER, III

Deposition taken at the instance
of the Plaintiff-Intervenor at the
United States District Attorney's office
in Jackson, Mississippi on the
13th day of November, 1986, commencing at 9:30 a.m.

* * * * *

[32] beginning college work and more uniform capabilities of students in the classrooms.

Q. You mentioned uniform capability?

A. More uniform.

Q. More uniform capabilities: Precisely what does that mean?

A. Students who have less exposure to sciences or English or math as compared to other students in the range of preparation and therefore skill level and communications skills of the students is greater, which makes teaching of the courses for the university professors more

difficult and the attainment of many students less dependable.

Q. Was the attainment of students in the undergraduate curricum a consideration in the Board's decision to alter its admissions requirements and to require the high school course requirements?

A. Yes.

Q. What was the basis for those concerns?

A. Relationship that ACT is determined and our universities demonstrate each year between ACT composite scores and grade point averages.

Q What is that relationship?

A. Positive.

Q. Could you explain that, Dr. Carter?

[33] A. Higher the ACT in general, the higher the grade point average.

Q. What is the minimum grade point average considered acceptable by the Board of Trustees in making this comparison in relationship between the ACT composite score and grade point average? What's the measuring base in terms of grade point averages?

MR. STEPHENSON:

Object to the form. You can answer. I don't understand it.

A. The universities use a 4. system for measuring average grades. And in reports which the Board receives, we see consistent but in general higher grades approach the 4. level the higher the ACT approaches 36, which is the highest ACT level.

The lower the ACT in general, the lower the grade point average which is a measure of student attainment.

MS. JOHNSON–BETTS:

Q. Is there a particular grade point average that is the

goal or objective for the Board of Trustees in terms of student achievement or attainment?

A. Each institution establishes a minimum grade point average necessary for satisfactory participation. The Board of Trustees does not establish such a uniform or [34] system-wide minimum grade point average.

Q. You mentioned, Dr. Carter, a relationship between the ACT composite score and the GPA.

A. Yes.

Q. I'd like to know in terms of the Board's examination of that data, what would be an unacceptable GPA?

MR. STEPHENSON:

Objection. I think the line of questioning is confusing to the witness. I know it's confusing to me. I think he's already stated his understanding of the Board's practices with the acceptability of the GPA. I'm going to let you proceed, but I'm not following this personally. And I want to make sure that you state your understanding in your answer.

A. The Board would expect a student to perform at or above the minimum GPA established by their institution and expects the institution to take corrective or even removal action of students who consistently or even in any individual case fall below what the institutional minimum GPA requirement is.

[35] Our work at the Board is to look at the policy of requiring ACT scores for admission and to verify to ourselves that, in fact, it does what we expect it to do to give us an indicator of student achievement in college.

And our conclusion is that, in fact, it does. We do not look at specific students and specific GPAs except in case of some type of appeal that a student would bring to the Board.

Q. Would the institution, Dr. Carter, undertake an institutional effort, the effort that's particular for each institution, to evaluate the relationship between the ACT composite score and the GPA achieved by the students of that institution?

A. The institutions do that and develop sophisticated regression equations in the process.

Q. Is that a requirement for the institutions, that they conduct such evaluative studies?

A. Requirement is that they report ACT and freshman GPA to the Board of Trustees for each year. Professional expectations would lead a person to expect that the universities would –

MR. STEPHENSON:

The question was what the policy and directiveness of the Board, Dr. Carter, if there is one.

[36] Don't make assumptions.

A. We require the universitities to report that data to the Board.

MR. JOHNSON–BETTS:

Q. And the data that the institutions report to the Board would be the ACT score of the student – composite score of the student?

A. Correct.

Q. And is it accumulative GPA or –

A. Number of hours taken in his first year and his grade point average in that first year. That is by student.

Q. When the Board examines the data submitted by the universities – individual universities – Dr. Carter, does the Board take into consideration – would you say the staff or the Board?

A. (Witness nods affirmatively)

Q. What do they examine the data for? What is their purpose in examining the data submitted by the individual institutions?

A. Reinforcing the belief that there is a positive relationship between the ACT composite score and the freshman year grade point average.

Q. When the staff of the Board looks at that data, do they take into consideration the particular [37] institution's requirements for maintaining a certain level of GPA at that institution? Maintaining a certain GPA at that particular institution: Did the staff take that into consideration when it looks at the information submitted by the institutions?

A. Not relevant to purpose because you may have a student with a 33 who's made a 1. which is a "D" average and a student with a 12 who might have had a 3 point. The purpose is to look at, in general, what's happened; and in general, students who have ACT scores in the 30's make in the high 3. and 4. And those who have 9 and 10's make in the 0. and 1. There certainly are exceptions. And you can see a gradual improvement in general as you move up the column of ACT scores and related gradual improvement in the grade point averages in general.

Q. Below what grade point average would the staff's assessment be that the student's work was not favorable to that desired by the Board of Trustees?

MR. STEPHENSON:

Object to the form. This is about the third or fourth time you've touched on this same area; and I still think it's ambiguous but go ahead, Dr. Carter.

A. The institution establishes what a minimum score is and the Board of Trustees supports those establishments. But the Board of Trustees does not [38] establish a minimum GPA and does not take any type of action on the basis of a minimum GPA for an individual student. That is an institutional responsibility.

MS. JOHNSON-BETTS:

Q. I believe, Dr. Carter, that you've shared that the staff looks at the information submitted by the individual institutions in terms of the freshmen enrolled at that institution—

A. Yes, sir.

Q. —their ACT score and their achievement in terms of grade point average for the first semester.

A. First year.

Q. First year of their enrollment. And that some students with particular ACT scores tend to do—tend to have certain grade point averages while other students tend to have other grade point averages.

A. Correct.

Q. Is there any assessment regarding which of the grade point averages is the more desired grade point average in terms of the Board of Trustee's concern regarding achievement of the students?

A. There is a belief that the higher the grade point average, the higher the level of achievement of the student since to obtain a higher grade point average the student would have had to demonstrate on course [39] examinations higher levels of achievement as determined by the instructors.

I'm not sure what you're going—may I get off the record for a moment? No, I better not do that.

MR. STEPHENSON:

We can go off the record, I think, and cut this short. We'll do whatever Zita wants you to do.

MS. JOHNSON-BETTS:

We can go off the record.

(Off the record)

Q. Dr. Carter, does the Board or the staff of the Board look for any particular GPA or range of GPAs

when it evaluates the information submitted by the universities regarding first-year achievement of the students of that university by ACT score?

A. The institutions, at least some of the institutions I'm aware of, do establish regression equations which give different results from year to year, of course, to get an indication of what they can expect in the way of a GPA for a given ACT score. The Board of Trustees' staff does not do that since the student bodies at the eight universities vary. And there is no purpose to be seen by trying to relate a particular GPA to a particular ACT. In fact, ACT is only one indicator of student achievement—is a good indicator. There are [40] many others, of course.

The point the Board wants to make is that it wants to verify the fact the ACT continues to be a good indicator that higher ACTS indicate—and therefore better curriculm preparations on the part of students as demonstrated by standardized tests—ACT composite results, in general—in better academic performance of the student in the classroom.

Q. You mentioned other measures of achievement other than the ACT score. What other measures of achievement were you referring to?

A. The measure of achievement, of course, that you're interested in is the student's performance in the classroom, academic performance in the classroom, which the best measure is the grade point average. I think you're asking about predictors of that, or are you?

Q. We were discussing originally predictors.

A. The ACT is used as a predictor of that and, hence, as a requirement for admission to the universities. There are others, of course. The student's grade point average in high school is one. Student's family income is one. Student's education level of his parents is one. There are a number of others. There is no predictor, no perfect set of particulars because students are individually different.

* * * * *

[114] question now is what efforts did he review in order to make a determination that he was satisfied with those efforts?

MR. RAY:

Okay. Same objection but go ahead and answer.

A. You referred to "students." I believe you mean faculty.

MS. YOUNGER:

Q. I mean faculty. I'm sorry.

A. The institutions advertise widely faculty positions. And by widely, I mean in generally accepted advertising media. For example, The Chronicle of Higher Education and their affirmative action Equal Employment Opportunities Publications also.

They are active in professional meetings which is where the marketplace for available faculty are held.

The institutions follow up particularly with other-race faculty contacts that they have identified and insure that within the constraints that are placed upon them that no stone is unturned to entice other-race faculty members to join the faculty. They provide incentives over and above traditional incentives to faculty to entice other-race faculty members to join our [115] faculty and become contributing members to our higher education system.

Q. Could you give us some examples of the incentives that have been provided to entice other-race faculty?

A. Certainly. Salary supplements are the best known. To some extent, black—other-race faculty receive special individualized treatment as in the case for on-campus housing, as in the case of more choice in things like committee assignments. The universities will make a number of implicit commitments to other—race faculty to insure that they find their stay at the institutions as satisfactory

as possible in order to not only attract them to the institution but to retain them in the institutions while they're there.

Q. Can you think of any others?

A. Those are the ones that come to mind.

Q. Are you generally familiar with the 1974 Plan of Compliance?

A. Generally, yes.

Q. What special efforts since 1981-82 have been provided by the Board to employ, train, promote qualified faculty members of the other race at the traditionally black institutions?

A. The steps that I mentioned before, as far as

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UNITED STATES' EXHIBIT 948

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 75-9-K

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM WINTER, ET AL., DEFENDANTS

DEPOSITION OF DR. EDSEL E. THRASH

APPEARANCES:

DONALD M. LEWIS, Esquire
HOWARD L. SRIBNICK, Esquire
United States Department of Justice
Civil Rights Division, Education Section
Washington, D.C. 20530
Representing the Plaintiff-Intervenor

ED D. NOBLE, Esquire
Assistant Attorney General
State of Mississippi
Post Office Box 220
Jackson, Mississippi 39205
Representing the Defendants

* * *

Taken in the instance
of the Plaintiff-Intervenor
At the Mississippi R&D Center
Jackson, Mississippi, on
December 9, 10, and 11, 1980
at 9:30 A.M.

* * * * *

[185] out-of-state students. "Out-of-state students enrolling as first-time entering freshmen must present a minimum composite ACT score of 15 or a comparable converted score on the SAT Exam, which will be determined according to the following table." "First-time entering freshmen foreign students must present a minimum ACT score of 20 or a comparable SAT score and must also present a minimum score of 525 on the Test of English as a Foreign Language." Then there is a section dealing with transfer students. Then the section dealing with admissions standards for nursing. I won't go over those, unless you would like for me to.

Q. That's not necessary. Dr. Thrash, I am used to seeing the institutions grouped in many different ways, and we were just getting used to the idea of seeing the regional universities grouped together. I am wondering why is the breakdown different with respect to the admissions standards. Why do Jackson State and Mississippi Valley and Alcorn have different admissions standards separate from the other five institutions?

A. The historical pattern of students attending the historically white institutions would indicate that students with less than a 15 have a poor chance of success in the Baccalaureate Degree programs at those institutions. The vast, vast majority of our black students make less than a 15 on the ACT, and it would be impractical to attempt to

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[50] **UNITED STATES' EXHIBIT 949**

Deposition testimony of T. K. Martin

Q. Has anyone sat down at the University to determine whether or not this new ACT requirement has had any effect one way or the other on the ability of the institution to recruit black students?

A. I don't think anybody knows.

Q. Um-hmm.

A. I don't think anybody knows.

Q. Is there or was there any apprehension on the part of people here either on our part or other individuals that it may have an adverse impact?

A. No. As far as I'm concerned, the ACT is not a good measure of prediction of how a person will do in college in terms of grades. It . . . and I'm not a statistician, but it . . . my understanding is that for a large number of people [51] the ACT is as good in terms of average grades from an average group of a large number of people, but the one most cherished thing that really determines whether a youngster will make it or not is not the ACTat all, but it's a question of how hard they work, and we don't measure that.We don't have anything that will measure that. It's called a lot of different things. Motivation is one name for it. If you had some of that and could bottle it, you could sell it and become a millionaire pretty quickly. I personally would rather have a youngster with 12 on ACT and who is burning up to do something, than to have one at 20 who didn't give a damn. So, I'm not dismayed at the number of youngsters who have below 15. There's no magic in 15. This was drawn out of the air in the Meredith days. Don't get me off on that either because I'm liable to tell secrets. The 15 started when the ACT came into vogue, and nobody knows anything about it except that 15 was supposed to cut 10 percent of the enrollment off. Whether it does or not, nobody knows. So, we're not concerned about the youngster that makes below 15. As far as I'm concerned, we could have 10 percent of them and not hurt anything. Some of our people feel . . . especially the elite people in engineering, for example, they think everybody's got to have an ACT of 25 or they can't do engineering. I

don't hold with that at all. That's little "I" that's talking there.

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UNITED STATES' EXHIBIT 960

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 75-9-NB

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, ET AL., DEFENDANTS

DEPOSITION OF ROY C. HUDSON

Deposition taken at the instance
of the Plaintiff-Intervenor at the
United States District Attorney's office
in Jackson, Mississippi on the
20th day of November, 1986, commencing at 9:30 a.m.

* * * * *

[10] A. Yes we do. We attempt to increase our other-race presence. Our objective is to increase other-race presence; and we try to include such activities and policies in our recruitment to do that, such as making sure that we visit schools that have—and, of course, for our institution other races would be—well, other than blacks since we are predominantly white.

We try to project presence of other-race students and faculty members in our recruitment activities. We try to visit those schools which have other-race population that we can talk to and present our institution. We generally include in our media presentations, in our brochures, our

catalogs other-race presence so that it can be appealing to those other-race students we're trying to recruit.

Q. Would the objective that you have just stated, Mr. Hudson, be in writing with regard to other-race recruitment?

A. Is it in writing?

Q. Yes. Is it a written objective?

A. It is written in our general recruiting information and brochures. We do say that we attempt to do those kinds—to increase our other-race presence based on those objectives and based on those activities that I gave just a moment ago.

* * * * *

[20] Q. Are they male or female?

A. Two females.

Q. And the two part-time persons?

A. They are two black males.

Q. Has your institution ever considered the need for a minority recruiter?

A. Yes, we have considered it. We had a minority recruiter at one time. I think up until '82. I believe, if I'm not mistaken, '82-83—going back about three years. And that person left to take another position. But we are—yes, we are aware of the need for one; and we did have one on staff.

Q. And the minority recruiter who left in '82-83, what was the race of minority recruiter?

A. He was white.

Q. What is the educational background of the director of admissions and recruitment?

A. She has a master's degree in counseling, guidance and counseling. I'm not sure what her undergraduate degree is in.

Q. And the two full-time recruiters?

A. One has an undergraduate degree in social science, and the other has a degree in business.

Q. Regarding the requirements for the position of recruiter, what are the job requirements,

* * * * *

[102] institution?

A. Our basic admission score is an ACT score of 13 with a percentage, 10 percent of the previous fall enrollment being accepted, the scores between 9 and 13.

Q. Is this the only admission requirement for your institution?

A. There are certain prerequisite high school course contents that the student have to have, certain numbers of units in English, science, and mathematics.

Q. With regard to the ACT score required for admission to your institution, when was the ACT score implemented for your institution?

A. The original ACT score requirement, as far back as I've been in administration, was implemented in 19—well, I wasn't in admission then; but it came—in 1977. I was at Valley during that time.

Q. When was the ACT score of 13 implemented for your institution?

A. That was effective fall semester of this year. This is the first semester that that score has been in effect.

Q. What was the ACT score required for admission prior to the fall of 1986?

A. 10 with a certain quota of 9's that could be entered. The base score was 10 with a certain number of [103] students that come in with a 9.

Q. What was the number of students who could come in prior to 1986 with an ACT score of 9?

A. That was a raw number of 50.

Q. With regard to the change in the ACT score required for admission in the fall of 1986, what was the reason for the change in the ACT score required?

A. Primarily to work with an image enhancement to gain perception of equality for the institution and trying to be in concert with other institutions in the state which are generally considered peer institutions.

Q. What institutions would you consider as peer institutions?

A. The Alcorn State would be the institution which would be most closely identified as a peer institution for Mississippi Valley.

Q. When was the change in ACT score required for admission to your institution requested from the Board of Trustees?

A. That was in April. It was at the April Board meeting, April of this year. I am recalling that from my memory. If I'm off, I won't be off a month or so – April or May, spring of this year and I'm almost sure it's April.

Q. When did the Board approve the change in the [104] ACT score for admission to your institution?

A. During the same time it was requested. I'm almost sure April of '86.

Q. Was a formal proposal submitted to the Board of Trustees requesting the change in the ACT score?

A. Yes, it was requested through the president's report to the Board of Trustees. The procedure is for the president to request an item to be put on the agenda for approval.

Q. Was a written request submitted to the Board of Trustees?

A. Yes, it was.

Q. In the written request submitted to the Board of Trustees regarding the change in the ACT admission score, what reasons were offered by the institution regarding the need for the change in the ACT score?

A. To enhance the image of the institution, to work toward a perception of quality, to gain the general admis-

sions level of the schools of which we have peer alignment and are similar in nature to the other institutions.

Q. In a proposal submitted to the Board of Trustees regarding the change in admissions, ACT score to your institution, was any assessment made of the potential impact on the ability of black students to enroll at your [105] Institution if the score were changed?

A. Yes, there was some projections made; and those projections had some bearing on the exemption percentage that was put into it with the 10 percent of the previous enrollment, that is, to not just cut everybody off directly at a 13.

Q. With regard to the assessment of the impact of the change in the ACT score required for admission, the ability of black students to enroll at your institution, was a specific percentage of students identified that would not be able to enroll at your institution that had been previously able to enroll?

A. Assessment shows that we can take in the same number of students that we had taken in this previous year.

Q. Whose office at your institution would have had responsibility for completing such an assessment?

A. The office of admissions. They would do the calculating because that office has the figures and everything available.

Q. Has your institution determined that it will continue to monitor student enrollment to assess the impact of the ACT, new ACT requirements on the ability of students to enroll at your institution?

A. Yes, we will. That is part of our objectives [106] to continue to monitor that.

Q. Does the Board of Trustees require that you do so?

A. No, I don't recall any specific requirements that the Board gave after accepting the recommendation.

Q. Dr. Hudson, if the same number of students will be admitted to your institution under the new ACT admissions policy as would have been admitted under the old admissions policy, what is the impact of the new admissions policy?

A. It's primarily a statement of your policy. It gives you a higher score to advertise and to include in your admissions statement. That is important in a state whereas a state institution—where perception of that institution is important to students, agencies, and all those people to whom you're accountable.

Q. Has your institution assessed the fall of 1986 student enrollment to determine whether or not it attracted increased numbers of students with higher ACT scores than it attracted in previous years?

A. Right now I don't have the—I don't recall what the specific ACT average is this year. I could get it, but I don't have it in my memory right now what the specific ACT average is this year as opposed to last year.

Q. When the request by your institution was made [107] to the Board of Trustees regarding the change in the ACT score required for admission, do you know the mean score on the ACT—I mean composite score on the ACT for black students at your institution?

A. I believe we were—this is— I'm going to give this statistic but I'm giving it from the best of what I can recall. I guess about 13.4 and I'm giving that as an answer but I'm not saying—I can't unequivocally say that's what it is. I have a lot of numbers in my head. Is it 13, 12—it's a .4, 13 or 12.4

Q. Were you involved in the preparation of the written request to the Board of Trustees for the change in the ACT score?

A. Yes, somewhat. I assist in the preparation of reports to the Board in the president's office.

Q. Were you involved specifically with the preparation of the written requests that made it to the Board in April of 1986—

A. Yes.

Q. —for the change in the ACT score?

A. Yes.

Q. In the written request to the Board of Trustees, was information concerning the average composite score for students at your institution included in that information?

[108] A. No.

Q. Did you know the mean composite score for black students in the state of Mississippi at the time that your institution requested the change in the ACT score for admission to your institution?

A. That information would be available to us. We would know that at that time.

Q. Was such information included in the request made to the Board of Trustees?

A. No, it was not included in the request.

Q. Dr. Hudson, I believe you mentioned that one of the reasons for requesting the change in the ACT score required for admission—please correct me if I'm in error—was to enhance the image of your institution.

A. That's correct.

Q. What is it about the image of your institution that needed enhancement?

A. Well, entrance requirements do have a gearing on the perception of quality of an institution. And in a state where you have several institutions and people are aware of their various requirements, there has become a pattern of associating certain perceptions of quality with the entrance requirements. That's a kind of general public perception.

I think that's about nationwide too. The [109] tougher it

is to get into a school, it's generally considered the better the school. I don't know if that's 100 percent, but that's the perception.

Q. With the prior ACT score for admission to your institution which was 10, I believe—

A. Uh-huh.

Q. —what was the perception regarding the quality of your institution?

MR. STEPHENSON:

Object to the form but you may answer.

A. Well, the lower the score and, again, when you're lower than everybody else, it has a bearing.

Q. Was it the institution's thought that in raising the ACT score that could attract greater numbers of students or students with higher ACT scores even in the same numbers?

A. Assuming, yes, that if your institution is perceived of better quality, then you would be able to attract students of higher quality, meaning, again, higher scores.

MR. STEPHENSON:

Would you read that question back, please?

(Previous question and answer read back)

MS. JOHNSON—BETTS:

Q. Has the institution at Mississippi Valley [110] determined as yet whether or not the change in the ACT requirements has reduced the number of students enrolled in the '86-87 academic year?

A. We have determined that no students were rejected out of the normal population that applied.

Q. And which office of Mississippi Valley would have been responsible for making such a determination?

A. The office of admissions.

Q. Was the determination of the office of admissions submitted in written form to other institutional representatives?

A. No, only in the sense that they would provide us an update on the number of students who applied and the number of students who had been admitted. But, see, they didn't have to impose the cutoff. Therefore, they didn't have to impose the cutoff. So it almost became a moot issue.

Q. With regard to the 10 percent of the students that may be enrolled with less than the required ACT score, has the institution established procedures for determining whether or not a student can be admitted included in that 10 percent?

A. Yes. We have a procedure but it is not an exact science, one of the reasons being that how you accept students to the institution—see, a student is

* * * * *

[113] A. No. No, they just send in an application just like other students.

Q. A student admitted with less than the minimum ACT composite score required for admission: Does that student have the same academic standing at your university as a student who meets the ACT composite score minimum?

A. Yes, he does.

Q. Were concerns raised within the institution with regard to the decision to request a change in the ACT score required for admission to your institution?

A. Yes. It was considered through different policy bodies on the university campus. The academic policies committee reviewed it, the faculty senate reviewed it, the executive administrative council for the university reviewed it. I wouldn't—your question referenced concerns. Yes, it was discussed and deliberated on by those different kinds of standing bodies and committees on campus.

Q. Were the committees that you referenced in

unanimous support of increasing the ACT admissions requirement for your institution?

A. Unanimous—all of the committees that are referenced did approve it. Now if there was some dissent or differences of opinion among persons sitting on those committees—yes, there were different views. Within the [114] discussion and deliberation, there were pros and cons presented on it; but all of those bodies did approve it as a body.

Q. When would the committees within the institution have considered the request for changing the ACT admissions requirement?

A. Prior to it being put on the Board's agenda by the president. We generally send our agenda to the Board about ten days before Board meeting. So those reviews would have been conducted prior to then.

Q. How far in advance of the Board's meeting did the committees at your institution consider the request for changing the ACT scores?

A. Somewhere within a pretty close proximity of that time. I would say, oh, within—certainly within a month of the time it was submitted.

Q. Had there been discussion at your institution at some earlier point regarding the need to increase the ACT score required for admission?

A. Off and on the question of admission had come up at the institution off and on different occasions.

Q. About how often were the increases discussed?

A. It would come up periodically at academic policies meetings, executive council meetings, faculty senate meetings. You know I would say over the last two

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UNITED STATES' EXHIBIT 961

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 75-9-NB

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, ET AL., DEFENDANTS

DEPOSITION OF WALTER L. CROCKETT

Deposition taken at the instance
of the Plaintiff-Intervenor at the
United States District Attorney's office
in Jackson, Mississippi on the
24th day of November, 1986, commencing at 9:30 a.m.

* * * * *

[143] are mainly based on the fact that people expressing the concerns did not realize that there were other avenues of admissions other than the 13. When they saw that in the newspaper somewhere, they just assumed if you didn't have the 13, that was it. And that would have been a drastic impact.

But after we explained to them there are other avenues for admitting students who show potential for college success, we usually don't have a lengthy discussion. It's just the fact they don't see a complete Board policy. They just pick up on ACT.

Q. Regarding the number of students who may be admitted under the exemption to the minimum ACT score required for admission to your institution, how do you determine whether or not a student can be admitted under the exemption?

Is a student automatically a student who submits an application to Jackson State University who has the minimum ACT score required for admission and does not rank in the top half of their class nor have a "B" average in high school, is that student automatically considered for admission under the exemption?

A. No. Each person is evaluated individually.

Q. Does the student have to take any additional steps in order to be considered for admission under the [144] exemption?

A. No other steps other than having a complete admissions file on record.

Q. And that's the same requirement for any student; is that correct?

A. That's right. And we expect the student to have a minimum of "C" average.

Q. The number of students that you can admit under the exemption is limited, isn't it?

A. Yes, 8 percent.

Q. How do you choose among the students?

A. Okay. We start at the top looking at both ACT scores—we'll start with the 12's. We look at high school average, and we move down.

If academic departments are looking at specific students with unique talent in their areas, we look at those students; and we will continue until we run out of slots.

If we run out of slots, hopefully it would be with the students with the lower requirements. We move from the top down. So we're looking at ACT, looking at high school average, and looking at special talents.

Q. With regard now to the special talents, must the department have expressed an interest in a particular kind of student for this student's special talents to be

* * * * *

UNITED STATES' EXHIBIT 962

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 75-9-NB

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, ET AL., DEFENDANTS

DEPOSITION OF KENNETH L. WOOTEN

Deposition taken at the instance
of the Plaintiff-Intervenor at the
United States District Attorney's office
in Jackson, Mississippi on the
17th day of November, 1986, commencing at 9:30 a.m.

* * * * *

[145] criterion, did you find that there would be an adverse impact on the ability of black students to gain admission to the institution as a result of increasing the admissions requirements?

A. There would have been because of my knowledge of what the scores are, but we didn't specifically separate or talk about the scores and not individual students.

Q. Is that a part of your discussions with regard to whether or not to go forward—

A. Yes. The fact that it would—it's not so—you know, it's really more—it affects people with poor

backgrounds, generally the poor people, not necessarily minorities but the poor people who are in the same category, how it would affect them, students who have not had some opportunities for learning or had not been in good school systems, that sort of thing whether a minority or not.

But the impact would have been to have decreased the minority potential, and that was one of the things that was discussed. And I was involved with the decision not to go to a higher score.

Q. With regard to the exception to the minimum ACT score required for admission, has the university established any parameters for its decision making [146] regarding what constitutes—regarding who would be admissible under the exception?

A. Yes. Now under our new admissions standards, there are about three areas of exception. Let's see if I can distinguish between them.

Q. Excuse me. Could we right now—I appreciate your effort and we are going to explore this later but I wondered—right now we're talking about the exception to the ACT composite score minimum required only.

A. Okay. Just talk about that one then?

Q. Yes.

A. If we require that a student who is below 15 take the test a second time, we think it's only fair to give him or her an opportunity to do their very best. So we ask them to take it a second time.

We ask them to petition in their own handwriting. In that petition we suggest to them they enumerate any factor or factors that they think may have influenced their test results.

If they have learning disabilities, we like to know something about the student, what his high school grades, his transcript; and some grades become a determining factor—their high school grades.

Any contributions the student makes outside [147] the school, whether he works or not, whether he's active in the community, whether he's a good citizen. All those facts are considered in making that decision.

There is a committee that has been appointed. It's a subcommittee of the overall admission committee; and it's composed of the dean of the school in which the student is to be enrolled, the vice-chancellor for student affairs office, and the registrar. Unless there are appeals or special circumstances, those are the three offices that get involved in the decision. They can, of course, appeal to the full committee.

Q. I'd like to kind of walk through this step by step so that I get an idea of how the process actually works. A student submits an application to the university, and they have less than the required minimum on the ACT composite.

We've not going to pay any attention to the high school unit requirements for right now. We're just going to look at the ACT minimum.

Once that application is received, what does your office do?

A. Well, first thing I do is write them a letter indicating that—as they are aware—if their score doesn't meet the minimum requirements we're interested in, we'd like for them to sit through the ACT again. Tell [148] them such things as, you know, might affect them or a factor that may have affected their score. We'd like to have another score before we make a decision on their application.

We can request the high school transcript, and we send them a petition letter form so that they can write up their petition that would include those factors I listed previously.

Q. With regard to—now the letter to the student. Okay?

A. Uh-huh.

Q. Are any suggestions provided in the letter regarding increasing the student's score on the ACT?

A. Do you mean did the coaches tell him what to do for the coaching staff and that sort of thing?

Q. I am asking was there any information provided in that letter regarding ways in which—

A. We would suggest that students sometimes can improve their scores, that they should take it again. We would like to see another score to get a true index of their level of educational preparation.

But, no, we don't tell them to go out and do this or that or—we just ask them to take the test again.

Q. With regard to the factors that you mentioned

* * * * *

[150] parallel to the high school student. If he's an "A" student, he's not going to suddenly make "F's" unless something else drastically happens. He is going to maintain about the same—in other words, and if he's an "F" student, he is not going to suddenly become an "A" student.

Q. I want to ask with reference to those students who do, in fact, sit for the ACT again—

A. Uh-huh.

Q. —and resubmit their scores, is it your experience that—how often are students able to meet the minimum test scores requirement as a result of having sat the second time?

A. Well, if their initial score was 14, the ability to make 15, I think, is a real good chance. If it's as much as a 3.0 variance, they probably won't make 15. Sometimes they drop a point.

Q. You also include in this letter to the student, I understand, a petition form letter?

A. Right.

Q. And I believe you requested this petition be handwritten?

A. Uh-huh.

Q. And the reason that you requested that it be handwritten is what?

[151] A. I would like to see how the student expresses himself or herself. That might have some implication for our decision. If the student doesn't test well but he writes well and makes good grades, that's all in his favor.

If he doesn't test well and he has got all "F's" just barely graduating from high school and can't write a sentence, that tells us something.

Q. In the category, I believe—for my purposes I made categories here—the kinds of things you look to with regard to admitting a student who doesn't have the minimum required ACT scores and so one of those categories is to look at their contributions outside of school.

A. Uh-huh.

Q. Would this category include—let me ask you what would this category include, and then I have a specific area that I want to inquire about.

A. Work after school, specific responsibilities the student has, involvement in clubs and organizations in school, work in the hospitals in the community, church involvement or involvement with any organization, girl scouts, boy scouts, all the things that the student has done to indicate that he or she has a broad area of interest and is spending some time in learning experiences.

UNITED STATES' EXHIBIT 965

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 75-9-NB

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, ET AL., DEFENDANTS

DEPOSITION OF REBECCA JAYNE PERKINS

Deposition taken at the instance
of the Plaintiff-Intervenor at the
United States District Attorney's office
in Jackson, Mississippi on the
19th day of November, 1986, commencing at 9:30 a.m.

* * * * *

[111] Q. I believe the date of the request—you testified that MUW requested the change in its ACT composite score minimum from the Board of Trustees in February of 1983?

A. (Nods affirmatively)

Q. When did the Board approve MUW's request?

A. It was approved at that time. We presented documentation at that time. You know, we had to give them the information necessary for that decision to be made to allow MUW to increase the ACT.

Q. Was the information presented at a particular

Board meeting of the trustees, meeting of the Board of Trustees?

A. I'm really not sure because I didn't make the presentation.

Q. Who would have made the presentation?

A. Either the president of my university or academic dean. I don't recall.

I'd like to add, if I could, that the ACT requirement does not totally exclude a student from admission because there is the option of transferring to our university and so far those students who have had below our cut off score—we have given them the information to let them know that, you know, if you can't come through this avenue then we will work with you as a [112] transfer student.

And we've made them aware of what the transfer requirements are. So it does not totally exclude them from MUW, and many of them may transfer at a later time if they wish.

Q. Are you aware of any specific concerns raised by the Board of Trustees with regard to enrollment of other-race students at your institution with regard to the ability of other-race students to enroll at your university if the ACT composite score was increased from 15?

A. I'm not aware, but then I wasn't there.

Q. Has anyone at your institution informed you of such a concern on the part of the Board of Trustees?

A. Of other-race students? Could you clarify for me of—

Q. Has anyone at your institution informed you of a concern on the part of the Board of Trustees regarding the effect of increasing the ACT composite score mimimum on the ability of other-race students to enroll at your institution?

A. No.

MS. JOHNSON-BETTS:

Why don't we just take just a few minutes break. We've been going on for a little while.

* * * * *

[117] Q. Okay.

A. And then the number of transfers that we admitted because it was interesting to note that our number of transfers increased significantly over a two-year period when we were raising the ACT because if we felt like if we weren't getting them as first time freshmen, we were successful in enrolling them as transfers, enrolling students who were not eligible to attend because of the ACT.

Q. Under the first category of prospects, what students would be included in that category?

A. Those would be students who for one reason or another had indicated to MUW they were interested in attending or they were interested in a program that we had.

Q. Is the information represented at the top of Exhibit 2D related to the three-year study that you had referred to in prior testimony?

A. I don't know that all of it is because I don't—you know, like I said I didn't review that. I didn't say that, but I did not review before I came specific years and dates; and I recall that this was done to give to an academic council on the campus to show them because of the concern the number of students in these areas that we're talking about. And I don't know.

UNITED STATES' EXHIBIT 967

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 75-9-K

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, ET AL., DEFENDANTS

DEPOSITION OF ROBERT A. BAIN

APPEARANCES:

HONORABLE ZITA JOHNSON-BETTS
Civil Rights Division
United States Department of Justice
10th and Constitutional Avenue, N.W.
Washington, DC 20530
Representing the Plaintiff-Intervenor

HONORABLE PAUL STEPHENSON
Watkins & Eager
Post Office Box 650
Jackson, Mississippi 39205
Representing the Defendants

* * *

Deposition Taken at the Instance
of the Plaintiff-Intervenor
At the United States Attorney General's Office
Jackson, Mississippi, on
the 21st day of November, 1986
Commencing at 9:45 A.M.

* * * * *

[66] to your institution, what are your responsibilities as director of admissions?

A. We are responsible for collecting all admissions materials or documents and making a decision as to whether that student is eligible for admission or whether that student is not, to keep them informed of their admission status—what they lack in the admissions process—and to make it as easy as possible for them to become a student at Delta State.

Q. Does your office have responsibility for reporting statistics regarding student enrollment to your institution?

A. No. We take the student through registration. We say if the student is eligible to register. From that point on, it's the responsibility of the registrar's office to register that student and to report on registration figures.

Q. With respect to the students that may be admitted without the required ACT composite score for admission, has your institution developed criterion for determining whether or not a student can be admitted under the exemption?

A. Some. The first people that we consider are people with special talents. And we're in better shape there. We have a greater percentage of our students who [67] fall in this category than some of the other institutions.

Q. What would you define as a special talent?

A. Vocal, instrumental, music, drama, art, people especially talented in one of the academic areas, maybe someone with special talents in data processing, computers, athletics.

Q. Is there a specific procedure that is followed in determing whether or not a student is admissible to the institution under the exemption to the ACT composite score requirement?

A. Yes.

Q. What is the procedure?

A. When we receive all the—we even do it before we get all of the documents because we can determine as soon as we get an ACT score on the student whether he meets that requirement or not. Anyone with at least a 9 on the ACT—which is our cutoff—we cannot admit anyone below the 9. But anyone with a score between 9 and 14, we will write and tell them that there is a program where we can admit students with less than a 15.

We ask them to have their counselors send a copy of a seven semester transcript along with any recommendations that they might have from guidance counselors, principals, teachers, or whatever. We try to make this decision early enough so that the student, if he does not fall within the [68] 50 that we do admit, can, of course, make other plans. We usually do this around April the 15th. It's almost always the week of April the 15th.

Q. Once the information from the high school counselor is received regarding students with ACT scores of 9 to 14, then what do you do?

A. Okay. At that point we will evaluate the transcripts on that student along with the recommendations from the guidance counselor. We look at rank in class. We're attentive to the race at that point, of the student. And we want to get the students in there that we think can be successful at Delta State, and so we're going to get the best 50 that we can possibly pick from that group.

Q. What does it mean—or what do you mean when you say that you are attentive to race?

A. Well, we use that to look at because, of course, we have quite a few other-race high schools in our area. And we try to as much as possible—also we look at the location of the student. As I said, we're a regional institution. And

if we have two students who are identical and one within 25 or 30 miles and the other one down on the Gulf Coast, we know that this student that lives closer to us is more likely to stay with us and graduate. And so we pick that student on that basis.

Now, since we have a good many in the Mississippi [69] Delta predominantly black schools, well, then they do get some consideration. They get more consideration really than other students do. We look at that, especially a student who's ranked high in their class but they just did not score well on their ACT.

Q. Would the race of a student carry any greater weight if the other-race student were compared with a similarly situated majority-race student?

A. On an equal—if they were equal in other aspects, the other-race student would probably be admitted.

Q. You mentioned, Mr. Bain, that one of your first considerations concerns the special talents of students. I'm trying to understand how you weigh the factors that you consider in determining whether or not a student can be admitted under the exemption to the minimum ACT score required. How much weight would you attach to a student's having a special talent?

A. That is probably weighted more than any other area. The recommendation of an instructor at Delta State, a department head, or other personnel on our campus carries more weight than any other thing that we have there. These people know what they're looking for in a student or in those talented areas where you have to have talents to be able to—you know, to have a good band [70] program, you've got to have somebody that can blow a horn. And if there is a No. 1 trumpet player out there that the band director says, "This guy doesn't have his ACT score high enough to be admitted as a regular student," we're going to

say, "All right. On your recommendation we're going to admit that student."

So we look at those special talents first because they're people that are looking for something other than just academic qualities.

Q. Is there any particular number of athletes that your institutions would admit?

A. We will admit up to 20, but we have never admitted 20.

Q. If a student is not included in the number of students admitted under the exemption to a minimum ACT score required for admission, is there any procedure that student may follow to appeal?

A. He can appeal through the academic vice-president.

Q. Are you aware of any instances where a student may have appealed the fact that they were not admitted under the exemption to the minimum ACT score required for admission?

A. I can't remember an appeal.

Q. Are decisions concerning the admission of [71] students made by a single individual or a committee?

A. They're made by a committee composed of our recruiting team and me, the director of admissions. We've had contact with most of these students out there, and we've talked to those guidance counselors. We're the ones that have open communications with the guidance counselors. We can find out more about those students.

And like I said, we're after those students that are going to be successful. Unsuccessful students are not good publicity for the university; so, we're doing the best job that we can to try to get people in who are going to be successful. And the guidance counselors out there know better those exceptions that we should make than we do, really.

Q. What would you say is the best predictor of success for the students seeking admission under the exemption to the ACT?

MR. STEPHENSON:

Object to the form of the question, but you may answer if you can.

A. I really don't know what would be the best predictor.

MR. JOHNSON–BETTS: (Continuing)

Q. What would be the best measure of the student's past success that you would look to in making

* * * * *

[75] There are a lot of things you don't have to say, but it's just understood. And not only our minority recruiter will be suggesting other-race students, but our other two recruiters also suggest other-race students quite frequently. So I think that's working real well.

Q. What percentage of the students admitted in 1986-87 under the exemption to the minimum ACT score required for your institution would you say were black?

A. I don't have any idea.

Q. Would you know of percentages for years other than 1986-87?

A. No.

Q. Has your institution, Delta State, undertaken any effort to determine statistically the validity of the minimum ACT score required for admission to your institution?

A. We do that yearly.

Q. What is it that you do?

A. We compare ACT composite scores to grade point averages.

Q. And which grade point averages are you referring to?

A. Okay. The student—of course, grade point averages, we are on a 4.0 scale. And to graduate from Delta State, every student must have at least a 2.0 no [76] matter what major that they are in. So we compare those scores really to whether they are being successful and headed toward graduation, which would be a 2.0 or better.

Q. Are the annual comparisions made of the students' GPA after one semester at your institution?

A. I'm not sure when that report is due, whether it's after the first semester or after the first year. I would have to look at that due date on that report.

Q. Would you attempt to compare the ACT composite scores with the GPA's of students in years other than their freshman year at your institution?

A. I do not see that report—a report of that kind; but that does not mean that we don't do one because with getting accepted into different programs—such as teacher education, School of Nursing—I'm sure that there are other comparisons made at a later date that I might not be aware of. Applicants to med school comes to mind.

Q. What have the annual comparisions of the ACT scores and freshmen GPA's indicated for your institution?

A. For our institution our admissions requirement of 15 seems to be the best predictor we have.

Q. This means that students with less than the 15 composite score on the ACT do not make 2.0 grade point averages?

[77] A. On the average. There is always the extreme. There is the student with a 12 that will have a 3.8, and there is the student with a 28 that will flunk out after two semesters. But on the average, yes.

Q. Has Delta State since 1981-82 requested any assistance from the American College Testing Programs

Research Service to assist in a longitudinal study to determine the statistical validity of the ACT score required for admission to your university?

A. Not that I know of. Keep in mind that we do not set our admissions policies, our minimum admissions policies.

Q. Has Delta State since 1981-82 requested a change in a minimum ACT score required for admission to your institution?

A. No.

Q. Are you aware of any discussion within the institution regarding the need to change the ACT score required for admission to your institution?

A. No. To my knowledge, I think we're satisfied with what that minimum ACT predicts for us.

Q. Has Delta State University since 1981-82 requested that any additional measure of student achievement be included in the admissions criteria for your institution?

[78] A. No, not that I know of.

Q. Does your institution offer any assistance to students in preparing to take at ACT?

A. Yes. We have ACT workshops sponsored by our office of counseling and testing throughout our region, at local high schools, and on campus.

Q. Is there a fee associated with the service, to the student that is?

A. Only for materials used, and I'm not sure about what that fee is.

Q. Is the ACT administered at your institution?

A. Yes, it is.

Q. Who would have responsibility for the administration of the ACT at your institution?

A. Office of counseling and testing.

Q. Were students made aware of the availability—in

your recruitment efforts, are students made aware of the ACT prep service offered by your institution?

A. We advertise it when we're going to have one, but generally not when we're recruiting unless we know that there is going to be one coming up and we have the dates of it. When we have a request, many times our recruiting will set up a special session for a particular school or group of students.

Q. Is there any minimum number of students

* * * * *

[82] **UNITED STATES' EXHIBIT 967**

DEPOSITION TESTIMONY OF ROBERT A. BAIN

* * * * *

Q. And is Exhibit No. 1, pages one through three, generally included in your school catalog for Delta State University?

A. Yes.

Q. Is there a reference in Exhibit 1 to the exemption available for admission for students with less than the 15 minimum composite score required for admission?

A. (Examine document) No. That exception policy is not a part of that catalog.

* * * * *

Q. It is part of the school catalog?

A. Yes, it is part of the school catalog.

[83] Q. Can you determine, Mr. Bain, whether this Exhibit No. 1 is a part of the current school catalog?

A. Not from – no, because the school catalog has been in that form pretty much down through the years; and without anything on it saying that that's the '86-87 school catalog, I could not say positively that that is.

Q. Would the high school course requirements have been included in earlier school catalogs?

A. Yes. We had to inform those students that those course requirements would be in effect in '86.

Q Thank you. I have no other questioning regarding Exhibit No. 1.

When the recruiters make visits, recruitment visits to high schools, would they inform students of the availability of the exemption to the minimum ACT score required for admission to your institution?

A. Because we are limited on the number of exemptions that we have, that is not an important part of our

recruiting efforts. If we told students of all the exceptions that were available, all the deferral policies, all the exemption policies, we wouldn't have time to do anything else. So many times they are not told.

If there is a question by someone who asks, "Can I get in with less than a 15?" Yes. They are aware of the policy. They are involved in picking the students. They [84] know the policy; and they tell the student, "Yes, this is what you can do. And we will evaluate your record in April and be able to tell you early enough so that if you do not get in, then you can look for another channel to enter Delta State." There are also other channels by which they can be accepted to Delta State and have access to Delta State.

Q. You're referring to channels other than admission as a freshman student?

A. Right. Right.

* * * * *

Supreme Court, U.S.
FILED
JUL 9 1991
OFFICE OF THE CLERK

Nos. 90-1205 and 90-6588

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR. ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX – VOLUME III

MIKE MOORE
Attorney General
State of Mississippi
450 High Street, 5th Floor
Jackson, Mississippi 39201
WILLIAM F. GOODMAN, JR.
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Watkins & Eager
400 East Capitol Street
Jackson, Mississippi 39201
Counsel for Ray Mabus, et al.

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel for the United States

ALVIN O. CHAMBLISS, JR.
North Mississippi Legal Services
1006 Jackson Avenue
Oxford, Mississippi 38655
ROBERT PRESSMAN
Center for Law and Education
955 Massachusetts Avenue, Suite 13A
Cambridge, Massachusetts 02139
Counsel for Jake Ayers, Jr. et al.

PETITIONS FOR WRITS OF CERTIORARI FILED JANUARY 28, 1991 (No. 90-1205) AND DECEMBER 17, 1990 (No. 90-6588)
CERTIORARI GRANTED APRIL 15, 1991

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

In the Supreme Court of the United States

OCTOBER TERM, 1991

Nos. 90-1205, 90-6588

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR., ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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PLAINTIFF'S EXHIBIT 86

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

SUMMARY IHL-1979-18

MISSISSIPPI VALLEY STATE UNIVERSITY

ACT Category	2.0 GPA or above	Less than 2.0 GPA
36	0	0
35	0	0
34	0	0
33	0	0
32	0	0
31	0	0
30	0	0
29	0	0
28	0	0
27	1	0
26	1	0
25	0	0
24	1	0
23	0	0
22	3	1
21	6	2
20	6	1
19	8	0
18	9	2
17	14	0
16	13	2
15	32	4
14	26	4
13	40	10
12	56	14
11	51	19
10	83	39
9	107	56
8	0	0
7	0	0
6	0	0
5	0	0
4	0	0
3	0	0
2	0	0
1	0	0
TOTAL	457	154

PLAINTIFF'S EXHIBIT 89

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

SUMMARY IHL = 18

UNIVERSITY OF SOUTHERN MISSISSIPPI 1980-81

ACT Category	No. GPA	2.0 GPA or above	Less than 2.0 GPA
36	0	0	0
35	0	0	0
34	0	0	0
33	0	1	0
32	0	2	0
31	0	2	0
30	0	9	0
29	1	10	3
28	1	25	1
27	0	26	4
26	1	37	5
25	3	54	8
24	0	49	16
23	2	61	12
22	2	76	19
21	0	72	23
20	2	85	20
19	6	77	25
18	3	58	45
17	4	74	54
16	3	77	56
15	6	82	88
14	1	16	24
13	0	17	18
12	1	13	9
11	0	4	5
10	0	2	4
9	0	1	0
8	0	0	0
7	0	0	0
6	0	0	0
5	0	0	0
4	0	0	0
3	0	0	0
2	0	0	0
1	0	0	0
TOTAL	36	932	447

PLAINTIFF'S EXHIBIT 90

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

SUMMARY IHL-1979-18

UNIVERSITY OF MISSISSIPPI

ACT Category	2.0 or above	Less than 2.0 GPA
36	0	0
35	0	0
34	0	2
33	0	0
32	10	0
31	13	2
30	17	1
29	32	4
28	44	5
27	59	3
26	82	13
25	72	18
24	90	30
23	82	17
22	93	26
21	96	35
20	102	41
19	83	39
18	79	40
17	104	42
16	83	57
15	60	77
14	20	21
13	12	17

PLAINTIFF'S EXHIBIT 200

HIGHER EDUCATION IN MISSISSIPPI

JOHN E. BREWTON, *Director*

A SURVEY REPORT
BOARD OF TRUSTEES
INSTITUTIONS OF HIGHER LEARNING
JACKSON, MISSISSIPPI
1954

* * * * *

the demand for work of this kind, no efforts should be made to develop it upon a faulty or weak undergraduate foundation. Standards for graduate training devised by the Conference of Deans of Southern Graduate Schools and by the Southern Associate of Colleges and Secondary Schools should be rigidly adhered to.

Basic Inequalities in Higher Education in the State

Although the State has made noticeable strides during the past decade in the education of its Negro citizens on all levels, the goal of equality is still very distant. Action is already under way to hasten progress. Some of the major inequalities existing at present will be reviewed here.

Pre-College Education

The quantity and quality of higher education is so inextricably bound to that on the lower level, particularly the secondary level, that it is not possible to consider inequalities in higher education at the exclusion of others. Opportunities for the Negro youth to get the basic secondary school training necessary for college admission have been considerably less than for the white youth of the State.

The 1952-53 school census reports 398,866 white children of school age and 496,913 Negro children. Sixty-eight per cent (272,549) of the white children and 55 per cent (271,856) of the Negro children were enrolled in school – 13 per cent less of the Negro children of school age than white children. It is speculated that the small percentage of Negro children enrolled in school is due to poverty, inaccessibility of schools, inadequate curricula, and indifference – each of which is a contributing factor to the basic inequalities which exist.

Ir the same year, 452 high schools were operated for white students and 247 for Negros. There were 62,452 white pupils attending high school – 22.9 per cent of the total enrollment in schools for white; but only 27,075 Negro pupils were in high school – 9.9 per cent of the total enrollment in schools for Negroes.

In 1952-53 the pupil-teacher ratio in schools for white children, based on average daily attendance, was 1 to 25 – 1 to 33 pupils on the elementary school level, and 1 to 15 on the secondary school level. In schools for Negroes, it was 1 to 34 – 1 to 37 on the elementary school level, and 1 to 18 on the seconday school level.

The instructional personnel (including superintendent, supervisors and principals, vocational teachers, elementary and secondary teachers) for 271,856 Negro children totaled 6,842, or a ratio of from 1 to 39; whereas the same personnel for 272,549 white pupils was 9,960, or a ratio of 1 to 28.

Marked inadequacies exist also in the training of teacher, as indicated in Table 14. The table shows that 13 per cent of the white teaching personnel held the master's degree, but only 0.9 per cent of the Negro personnel held this degree. The bachelor's degree was held by 66.7 per cent of the white personnel and 30.2 per cent of the Negro group. Almost 70 per cent of the Negro personnel had two

or fewer years of college training, compared with 7.5 per cent of the white group.

TABLE 14

TRAINING OF MISSISSIPPI TEACHERS, 1952-53*

	White Teachers		*Negro Teachers*		
Training	*Number*	*Per Cent*	*Number*	*Per Cent*	*Total*
M.A. Degree	1,329	13.7	66	0.9	1,395
B.A. Degree	6,646	66.7	2,065	30.2	8,705
3-Years College	1,248	12.5	825	12.1	2,073
2-Years College	525	5.3	1,221	17.8	1,746
1-Year College	140	1.4	1,390	20.3	1,530
High School	78	0.8	1,154	16.9	1,232
3-Years High School and Below			121	1.8	121

Source: Mississippi State Department of Education, Division of Administration and Finance, Statistical Data, Bulletin SD-53, p. 29.

* Includes superintendents and vocational teachers.

The average salaries of white teachers with all levels of training exceeded those of Negro teachers with corresponding training. Efforts to remedy this condition were made by the Legislature in 1953.

The cost of transporting white children in 1952-53 was $4,476,753.60; and for Negro children $1,179,826.71, or 20.9 per cent of the total of $5,656,580.31 spent for transportation.

The cost of instruction for Negro children totaled $8,816,670.10, and the cost for white children was $23,536,022.62, or 72.7 per cent of the total of $32,692.72 spent for instruction.

These inequalities make fundamental differences between the finished products of the schools for the two racial groups.

Higher Education

Even greater inequalities exist in the area of higher education. It has been reported earlier that opportunities in this field are limited in the three colleges to undergraduate training in teacher education, in agriculture and the mechanical arts, and in the practical arts and trade; whereas the needs of the white population are served by five colleges, with offerings extending from a variety of undergraduate programs through extensive offerings on the graduate and professional levels. In 1952-53 there were 3,431 students enrolled in all the colleges for Negroes in the State, or 0.3 per cent of the total Negro population; whereas in the colleges and universities for white students, including graduate students, there were enrolled 18,227 students, or 0.9 per cent of the total white population.

Salaries are lower in the institutions for Negroes. The salary range for Negro teachers is lower in all ranks than the range for white teachers.

Of the total of 10,031,539.40 allocated to the institutions for higher education for the period 1952-54, $1,577,175.46, or 15.7 per cent, went toward the development of higher education for Negroes.

The State provides, through the University of Mississippi and other state colleges, ample opportunities for white students to pursue graduate and professional study; but the Negro student has beem compelled to go outside the State for this service. For this purpose, the Legislature appropriated only $75,000 for the 1952-54 biennium, "to compensate Negro students who must go to institutions outside the State for certain professional, technical, or grac'uate studies."

Oppportunities have been available to both white and Negro students to obtain training in the fields of human medicine, veterinary medicine, and dentistry through the

facilities of the Southern Regional Education Board. Many more white students have been qualified for these opportunities than Negro students. The data are shown in Table 15. For the period 1949-51, 16 Negro students qualified for attendance at Meharry Medical College, but 111 white students qualified for attendance at seven different institutions.

TABLE 15

Institution	*Medicine*	*Dentistry*	*Veterinary Medicine*	*Total*
	White Students			
University of Tennessee	46	12	58	
University of Alabama	4			58
Louisiana State Univ.	10			10
Tulane University	7			7
Emory University	5	8		13
University of Maryland		2		2
Alabama Polytechnic			17	17
Total	72	22	17	111
	Negro Students			
Meharry Medical College	11	5		16
Tuskegee Institute Total	11	5		16

Source: Adapted from the Report of Board of Trustees, Institutions of Higher Learning, 1949-1951, p. 9.

These inequalities in opportunities contribute to the scarcity of Negroes in the professions. It will be recalled that when the 1945 survey was made there were 22 times as many white doctors in Mississippi in proportion to the white population as Negro doctors in proportion to the Negro population; 13 times as many dentists, 5 times as many pharmacists, 420 times as many lawyers, and 40 times as many social workers.

From 1948-1953, the institutions for white students in the State conferred 14,205 degrees, one for every 131.1 white persons in the populations; whereas the colleges for Negroes conferred 1,268 degrees, or one for every 778.1 Negroes in the total population.

These data have been utilized to establish the point that, in the past, opportunities for the higher education of Negroes in the State have been far less than those provided for other citizens. It should be recognized, however, that there has been awareness of these inequalities on the part of the Board of Trustees of the State Institutions of Higher Learning and the Legislature of the State; and steps have been taken to lessen the gaps. Prior to the recent Supreme Court decision, the Legislature adopted a public school equalization program designed to provide the same quality and quantity of education for Negroes as for whites. On a one-year trial basis, the program called for consolidation of small local schools, equalization of Negro and white teachers salaries, and making a start on equalizing transportation facilities.

Looking Ahead – Recommendations for Future Action

The decision of the United Supreme Court on the question of racial segregation in education is destined to bring about fundamental changes in the pattern of public education on all levels in the South; but it would be premature at this juncture to predict the exact nature of these changes. However, it is generally agreed among those who have given serious thought to possible consequences, that the changes may be gradual. The Court, in withholding a final decree, recognized that the problem of desegregation will be a complex one and that non single blueprint would hold for all areas in the South.

Fundamental Needs in Higher Education

Reference has already been made to the anticipated increases in the potential Negro college population in the State. This outlook is based chiefly on studies of past and present enrollment trends in the high schools for Negroes. In 1939, slightly more than 9,000 Negro students were enrolled in the secondary schools of the State; but in 1952

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PLAINTIFF'S EXHIBIT 279

ADMISSION STANDARD AND CODE REQUIREMENTS

[SEAL OMITTED]

BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

FEBRUARY 1986

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* * * * *

6. Any student who has a deficiency or deficiences in the required high school units and who does not meet the exemption criteria shown above must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a "C" average (2.0 GPA on a 4.0 scale) in the following 24 semester credit hours:

   6 semester hours English Composition
   3 semester hours College Algebra or above
   6 semester hours Laboratory Science
   9 semester hours Transferable Electives

or

Attend Alcorn State University, Jackson State Univesity, or Mississippi Valley State University (see their entrance standards) and earn a "C" average (2.0 GPA on a 4.0 scale) on 12 transferable semester hours.

C. *Alcorn State University*

1. A minimum of a thirteen (13) composite score on the ACT is required.
2. In addition to students admitted with a thirteen (13) composite score on the ACT, the institution may enroll a number equivalent to ten (10) percent of the previous year's fall term enrollment with an ACT composite score of nine (9) and up to the current minimum admissions standard.
3. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.
4. See Section F.

D. *Jackson State University*

1. A minimum of a twelve (12) composite score on the ACT is required. A minimum of a thirteen (13) composite score on the ACT is required beginning fall 1986.
2. Beginning the fall of 1986 in addition to students admitted with a thirteen (13) composite score on the ACT, the institution may enroll a number of equivalent to eight (8) percent of the previous year's freshman class enrolles (for summer, fall, and spring term) to accommodate talented and/or high risk students with an ACT composite score of (9) and up to the minimum admissions standards for the current year. Students with less than 27 semester hours credit may be counted to determine the number of freshmen for this purpose. A student may be counted in any one of the enrollment terms during the fiscal year, but not more than once during the same year.

3. Students with a nine (9) up to the current admission standard composite score on the ACT and who have a 3.0 grade point average on a 4.0 scale or who rank in the upper fifty percent of their graduating class will be exempt from the institution's eight (8) percent flexibility allowance.
4. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.
5. See Section F.

E. *Mississippi Valley State University*

1. A minimum of a ten (10) composite score on the ACT is required.
2. In addition to students admitted with a ten (10) composite score on the ACT, the institution may enroll a number equivalent to five (5) percent of the previous year's freshman class enrollees (for summer, fall, and spring terms) to accommodate talented and/or high risk students with an ACT composite score of nine (9). Students with less than 27 semester hours credit may be counted to determine the number of freshmen for this purpose. A student may be counted in any one of the enrollment terms during the fiscal year, but not more than once during the same year.

3. Students with a nine (9) composite score on the ACT who have a 3.0 grade point average on a 4.0 scale or who rank in the upper fifty percent of their graduating class will be exempt from the institution's eight (8) percent flexibility allowance.
4. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.
5. See Section F.

F. *Alcorn State University—Jackson State University—Mississippi Valley State Universities*

1. Any student with an ACT Assessment composite score of 20 or above is exempt from the Board's high school units requirements.
2. Any student with less than the composite score of 20 who has a deficiency in the required high school units may be exempt from an area of deficiency by having an ACT Assessment subtest score or at least 15 on the appropriate subtest. This option is not available for any student with more than one deficiency.
3. Any student with a "B" average (3.0 on a 4.0 scale) in the required high school units in an area (e.g., mathematics) in which the student has no more than one deficiency may be exempt from that deficiency and from the required minimum ACT Assessment subtest score that is required for exemption. This option shall apply to no more than one area.
4. These institutions may offer Board-approved summer courses to high school graduates who have no more than one deficiency in any one area of the required high school units. The intent of these courses will be to fulfill the deficiences of these students. College credit can be given for these courses, but this credit cannot be counted toward graduation from a Mississippi public university. Students taking these courses may not earn more than six semester hours in a summer school. Students selecting this option must either attend the institution

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PLAINTIFF'S EXHIBIT 284

PERCENT OF UM'S FALL 1980 ENTERING FRESHMEN IN SELECTED ACT COMPOSITE SCORE CATEGORIES BY RACE

ACT Score	*Black Students*	*Non-Black Student*
20	17.4%	49.2%
20	6.7	7.7
19	6.7	7.3
18	3.8	7.6
17	5.8	7.3
16	9.6	7.9
15	13.5	7.5
15	36.5	5.5
TOTAL	100.0%	100.0%

* Source of data: Information prepared by the Registrar's Office for the Ayers Case.

PLAINTIFF'S EXHIBIT 285

AN EVALUATION OF THE DEVELOPMENT STUDIES PROGRAM AT DELTA STATE UNIVERSITY

Prepared by
Office of Institutional Research
Tony McCoy
John Thornell
Brenda Fillingham

Delta State University
September, 1984

In 1980 Delta State University initiated a developmental studies program to assist underprepared students in the areas of English, mathematics, and reading. A grant from the Department of Education through the Title III Strengthening Developing Institutions Program provided initial funding in the effort. Shortly thereafter, the Board of Trustees of State Institutions of Higher Learning for the State of Mississippi mandated developmental studies programs at the eight state-supported campuses using student ACT scores in English and mathematics as criteria for participation. As series of courses labeled as 090 and including English, Mathematics, Reading, and Study Skills were introduced in response to the Board mandate and offered at Delta State for the first time in the fall of 1980. For the past four years the University has required participation in these courses for the following:

(1) Students scoring below 12 on the ACT subtest in English are required to take 090 English.
(2) Students scoring below 12 on the ACT subtest in mathematics are required to take 090 Mathematics.

(3) Students scoring below the 20th percentile on the Nelson-Denny Reading Test are required to take 090 Reading.
(4) Any student declared eligible for an 090 course is required to take 090 Study Skills concurrently with 090 English, Mathematics, and/or Reading.

During the four-year period from 1980-1984, 464 students participated in the developmental program. Of this number, 21% were enrolled in more than one developmental course, thus indicating a tendency for eligible students to be deficient in more than one area. Sixteen students having participated in the first developmental studies program were awarded diplomas at the May, 1984.

With the program having been in operation for four years, the opportunity arises for an evaluation of the program. The impact of the program on such factors as attrition and academic achievement can now be investigated. The purpose of this study was to compare attrition and academic performance of students having participated in the developmental program with a comparable sample not having access to the program.

Method

The sample for this investigation consisted of 115 Delta State University freshmen who met the criteria for designation as developmental students shown above. The control group consisted of 60 subjects who were enrolled at Delta State in the fall of 1979, the year prior to the start of the 090 developmental studies program. The experimental group was comprised of 55 subjects enrolled in the fall of 1980, the first year of the 090 program. While the two samples came from different academic years, there is still an assumption of group equivalence based on com-

parability in average composite ACT scores for the two groups (Control = 15.18, Experimental = 14.96, F-test non-significant at .05 alpha level).

Two dependent variables, attrition and academic performance, were examined. Attrition rate for the two groups was compared at the end of two and one-half years and again at the end of four years. Academic performance, as measured by GPA, was compared at the end of five semesters. A pooled t-test was used as a test of significance for academic achievement variable. Percentiles were compared for attrition.

PLAINTIFF'S EXHIBIT 286

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
3825 Ridgewood Road
P.O. Box 2336
JACKSON, MISSISSIPPI 39225-2336
(601) 982-6611

Office of the
Executive Secretary and Director

December 21, 1984

TO INSTITUTIONAL EXECUTIVE OFFICERS

Gentlemen:

Enclosed is a copy of the developmental studies report distributed to the members of the Board of Trustees at the December meeting.

Summary information given to the Board included the following:

1. For those students enrolled in developmental studies courses as a result of the Board requirements, the five-year headcount average is 1700. This is an average of 25% of the first-time entering freshmen average of 6900.
2. About one-third of those students enrolled in developmental studies courses are enrolled in more than one course.
3. Of the first-time entering freshmen, an average of 7% are enrolled in developmental studies English, 22% in developmental studies math, and 7% in developmental studies reading.
4. Of those students enrolled in developmental studies courses during the fall 1980 semester, 39% have graduated or are still enrolled as of fall 1984. As of fall 1984, 59% of the 1981 developmental studies students are still enrolled; 53% of the 1982 developmental studies students, and 72% of the 1983 developmental studies

students are still enrolled as of fall 1984. These retention rates are in line with retention rates for all first-time entering freshmen over a comparable time.

If you have any questions, please contact this office.

Sincerely yours,

/s/ E. E. THRASH

E. E. Thrash
Executive Secretary and Director

EET:rp

Enclosures

Copies: Chief Academic Officers

PLAINTIFF'S EXHIBIT 289

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
3825 Ridgewood Road
P.O. Box 2336
JACKSON, MISSISSIPPI 39225-2336
(601) 982-6611

Office of the
Executive Secretary and Director

May 2, 1984

TO INSTITUTIONAL EXECUTIVE OFFICERS

Gentlemen:

Enclosed are the quotas of five-time entering freshmen considered to be high risk students for your respective institutions for the periods of summer term 1984, fall term 1984, and spring term 1984. These quotas confirm those figures given your institutions earlier by telephone from this office. These figures were retrieved and were calculated from reports filed in this office according to the admission policy adopted by the Board of Trustees on December 20, 1979.

If we may provide clarification, please contact this office.

Sincerely yours,

/s/ E. E. THRASH

E. E. Thrash
Executive Secretary and Director

TCM/lh

Enclosures

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

Total Quota of High Risk Students by Institution to be Admitted for Summer, 1984; Fall, 1984; Spring, 1985

Institution	Admitted With Less Than 27 SCH Summer, 1983	Admitted With Less Than 27 SCH Fall, 1983	Admitted With Less Than 27 SCH Spring, 1984	Enrolled Fall, 1982	Total	Quota
Alcorn State University	N/A	N/A	N/A	2,555	2,555	256*
Delta State University	166	631	85	N/A	884	50**
Jackson State University	259	1,562	306	N/A	2,127	106**
Mississippi State University	476	2,225	147	N/A	2,848	142**
Mississippi University for Women	138	443	164	N/A	745	50**
Mississippi Valley State University	208	777	114	N/A	1,099	55***
University of Mississippi	140	1,560	145	N/A	1,845	92**
University of Southern Mississippi	325	1,829	310	N/A	2,464	123**

* Total number to be admitted with less than a 13 ACT composite score.

** Total number to be admitted with less than a 15 ACT composite score.

*** Total number to be admitted with less than a 10 ACT composite score excluding students with a 3.0 high school GPA or those students who rank in the upper fifty percent of their graduating class.

PLAINTIFF'S EXHIBIT 291

ACT ISSUEgram
NUMBER 6
January 1986

ADMISSIONS TESTING AND MINORITIES –
SELECTED ISSUES AS RELATED TO
THE ACT ASSESSMENT PROGRAM

INTRODUCTION

The ACT Assessment Program is a comprehensive program intended to assist students and institutions with postsecondary education planning and decisions. The ACT Assessment instrument consists of a battery of four academic tests written during a timed test session and a Student Profile Section and an Interest Inventory, which students complete at the time they register for the ACT Assessment.

The ACT Assessment is used by more than 1,375 postsecondary institutions and is administered annually to approximately one million high school juniors and seniors. Of the individuals who constitute this group, about eight percent are Afro-American/Black, one percent American Indian/Alaskan Native, two percent Mexican-American/Chicano, two percent Asian-American/Pacific Islander, and one percent Puerto Rican/Cuban or other Hispanic.

THE ISSUE

Postsecondary education is viewed by most people as an avenue of economic security and personal development. Accordingly, access to such education becomes a matter of great importance, especially to minority groups whose educational opportunities historically have been restricted.

It is in this context that the use of standardized tests for postsecondary admission is often questioned, especially by

spokepersons for minorities. Such questioning has recently received greater public

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INTERPRETATION AND USE

Because many factors (e.g., socioeconomic status, differences in educational opportunities, culture, etc.) can potentially affect the test performance of many students who are members of minority groups, ACT believes that assessment for the purpose of college admissions should reflect as complete a picture as possible of students and should include other information in addition to test scores. Following is a brief summary of important considerations to remember in the interpretation and use of ACT Assessment data with minority students:

- The ACT Assessment Program presents a comprehensive picture of students. The ACT tests are but one element of a data base that includes information about a student's background, interests, plans, accomplishments, and needs for various types of assistance. This information is useful not only in admissions, but also with follow-up support (e.g., counseling, academic advising, placement, etc.).
- The ACT tests measure academic competencies developed by students through their past educational experiences. The scores should, therefore, be interpreted in view of previous educational opportunities and conditions.
- The ACT tests assess a student's current educational development and are not intended to measure either innate aptitudes or the capacity to acquire the academic skills stressed in the tests through subsequent interventions.
- ACT data should be used along with other information about students (e.g., personal qualities). The

type of additional information that is of value is dependent upon the types of uses being made of the data.

SUMMARY

The preceding sections deal with a number of topics helpful to an understanding of the ACT Assessment Program and its utility in the college admissions and placement process. These include: procedures used to provide balance in test materials and to detect and eliminate passages or questions that might be viewed as biased against minorities; content of the ACT examinations; average test performance by minority and majority students; predictive validity of ACT test scores and self-reported high school grades for different racial-ethnic groups as related to first-year college performance; and points to consider when interpreting and using ACT Assessment results with individual minority students.

As an indicator of general educational development and of attained cognitive skills important to academic success in postsecondary education, the ACT tests are appropriate for use with minority-group students. The manner of such use in the admissions decision is, however, most important. In the case of minority students whose prior educational opportunities have been limited, it becomes especially appropriate to make use of the total scope of information—cognitive as well as non-academic—provided by the ACT Assessment.

PLAINTIFF'S EXHIBIT 292

THE ACT ASSESSMENT **1986-87**

Using the ACT Assessment on Campus

[Photo omitted]

Trends in ACT Test Scores

Over time, certain long-term trends are apparent in scores on the ACT Assessment. In addition, small fluctuations occur in these scores from year to year. ACT discourages overinterpretation of the small changes in average scores that occur from one year to the next. Changes in average scores can result from a variety of factors, the most notable being changes in the demographic characteristics of students taking the test.

Average scores on the ACT Assessment clearly showed a downward trend from the late 1960s to the mid 1970s. This decline was a national phenomenon that occurred in all regions and in nearly all states.

Since 1975-76, the average ACT Composite score has varied only slightly from year to year. The very visible decline of the early 1970s ended in 1975-76, and the general level of performance of college-bound students, as indexed by their average ACT Composite scores, has been relatively stable since that time, with no clear trends either upward or downward.

The ACT Assessment and Educationally Disadvantaged Students

ACT test data are used by colleges along with other information in academic advising, placement, and, in some instances, selection. Because the tests measure a student's current level of educational attainment in the knowledge and abilities tested, students who for a variety of reasons (e.g., those for whom social factors have impeded educational development) are educationally disadvantaged, score lower on the tests. This group of educationally disadvantaged students, though comprised predominantly of minority students, encompasses a broad range of racial and ethnic backgrounds. As a group, these students also frequently experience difficulty in the first years of college—as predicted by test scores and prior academic record—largely because of their educational deficiencies.

ACT has studied the validity of the ACT tests for predicting college grades and found that the tests are essentially as predictive for educationally disadvantaged students as for all other students. Thus, colleges that use the ACT test data and other relevant information identifying students as educationally disadvantaged, and that enroll such students, need to provide support for these students to assist them in overcoming the effects of initial educational disadvantage.

Individual colleges' decisions about whether or not to admit educationally disadvantaged students involve value judgments that pertain to the purpose and mission of the institution. If the primary concern of an institution is to enroll students who are likely to be successful academically without extraordinary intervention (e.g., remedial coursework), then few students who are educationally disadvantaged (as identified by test scores another data) will be selected. If, on the other hand, the institution is willing and able to assist educationally disadvantaged students upon enrollment, then more such students should be selected than indicated by test scores and other academic criteria (e.g., high school grades). ACT recommends that each college carefully examine its sense of purpose and mission relative to such students and then implement practices and procedures consistent with same.

For its part, ACT believes that all students who can succeed in college should have a fair chance of selection. Therefore, ACT recommends that all students be selected with appropriate attention given to qualifications in addi-

tion to test scores. A report of ACT research in the area of using test data in selection with emphasis on educationally disadvantaged students is provided in Chapter VII, "Bias in the Uses of Educational Assessment," of Volume One, *Assessing Students on the Way to College: Technical Report for the ACT Assessment Program*, available from ACT Publications for $5.00. The following free reports also are available: ACT Research Bulletin 81-1, *Predictive Validity of the ACT Assessment for Afro-American/Black, Mexican-American/Chicano, and Caucasian-American/White Students;* ACT Research Bulletin 81-2, *Some Facts about the Predictive Validity of the ACT Assessment.*

Is there any penalty for guessing on the ACT Assessment?

There is no penalty for guessing on the test; a student's raw score on each test is simply the number of correct responses. Thus, it is to each student's advantage to answer every question.

Self-reported High School Grade Information

Perhaps the most reliable research findings in education are that high school grades are predictive of college grades and, further, that test scores and high school grades combined are a better predictor of college grades than either alone.

Students taking the ACT Assessment are asked to report the most recent grades earned prior to the senior year in high school in English, mathematics, social studies, and natural sciences. These four grades are used in ACT's Standard and Basic Research Services, along with ACT test scores, to predict a student's overall GPA during the first year or term at a given institution and to predict the probability of earning a C or better in specific courses identified by the institution. (For an explanation of these predictive services, see page 20.)

Several analyses indicate that students report these four grades with a high degree of accuracy. In a national study, correlations between self-reported and school-reported grades ranged from .81 to .86. The study found that 80 percent of the grades reported were accurate and 98 percent were reported accurately within one grade. It also was found that when there is a discrepancy between student-reported and school-reported grades, it is not clear-cut which is accurate. The study found that high school officials sometimes reported the grades inaccurately. For further information regarding the reliability of self-reported grades in the four subject areas, see ACT Research Report No. 45, *The Accuracy of Self-Report Information Collected on the ACT Test Battery: High School Grades and Items of Nonacademic Achievement.*

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The Act College Report

Most colleges receive the ACT College Report as their standard reporting service. Two copies of the report are sent to colleges and can be used in a variety of ways to help students in the transition from high school to college. The College Report is described in detail here.

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High School Grades, ACT Scores, and Norms

The areas labeled "Scores and Predictive Data" reports pertinent high school grades, ACT standard scores, and national norms. In addition, local norms and academic predictions are reported for institutions that participated in the ACT research services within the preceding 3 years.

These letters are the student's report of the most recent high school grades *prior to the senior year* in English,

mathematics, social studies, and natural sciences. (Note: A more detailed list of particular courses taken and grades earned is reported at the bottom of the College Report.) An N indicated that the student did not take a course in that subject.

* * * * *

Local norms are included on the report forms forwarded to all colleges that have used one or more of the three ACT research services—Standard Research Service, Basic Research Service, and Class Profile Service—within the last 3 years. Ordinarily, local norms are based on the performance of a group of students representative of the entire freshman class of a college.

These percentile ranks show how the prospective student's performance on the ACT Assessment compares with that of freshmen who were enrolled when the institution participated in the ACT research service from which the norms were obtained. This is usually the preceding year, although it could include freshmen who were enrolled as long ago as 3 years. Generally these local norms are based on all or nearly all of the freshman class, or a representative sample of the group. The user should consult the institution official who coordinated research service participation to learn the characteristics of the group on which the norms are based, thus avoiding misinterpretation of these data.

* * * * *

Overall GPA and Specific Course Predictions

The extent to which overall GPA and specific course predictions are indicated on the College Report depends on the institution's participation in two of ACT's research services—Basic Research Service and Standard Research

Service—within the last three years. Participation in the Basic Research Service enables an institution to receive overall GPA predictions; participation in the Standard Research Service enables an institution to receive both overall GPA predictions and specific course predictions.

Basic Research Service participants can receive up to two overall GPA predictions and probabilities of the students' attaining C or higher. These are based on the Basic Research Service men, women, and summary (total) groups. Predictions by sex are provided *only* if the college submitted data on at least 50 men and 50 women students. For all Basic Research Service schools, the information refers to the prospective student's predicted overall performance, not to specific course grades.

All boxes under the "Overall GPA Predictions" and "Specific Course Predictions" labels will be completely filled in *only* if the college has (a) used the Standard Research Service and (b) requested *separate* analysis for at least five locally defined subgroups and the five specific courses at the institution. (Specific course predictions cannot be obtained from Basic Research Service participation). The following examples show that the institution has participated in the Standard Research Service to such an extent.

Percentile Ranks of Predicted Grades in Various Groups

These percentile ranks compare the prospective student's predicted overall grade point average with the predicted overall grade point average with the predicted overall grade point averages of freshmen students who were enrolled the indicated year in each of the five groups listed. These specific groups were designated by the official who supervised the institution's research service participation. The area labeled "Research Plan" indicates

whether the Basic (B) or Standard (S) Research plan was used. The area labeled "Freshman Year" indicates the year of the freshman class whose performance was used to develop the grade predictions. (Predictive grades for the current freshman class are necessarily based on the performance of prior freshman students because they are the only ones for whom college grades are available.)

* * * * *

Overall Grades Expectancies in Various Groups

This is the probability that the prospective student would earn an overall average of C or higher in each of the five curricular groups listed. Probability deals with chances of particular outcomes occurring among *like* students. Thus in this example, in 1985-86, 89 percent of the students with high school grades and ACT scores similar to this student's made a C average or better in the education curriculum at *this institution*. Thus, based on this student's grades and ACT scores, chances are good (89 out of 100) that the student will earn a C average or better, if there are no substantial changes in curriculum, grading policies, etc.

Percentile Ranks of Predicted Grades in Specific Courses

Interpretation of these percentile ranks of predicted course grades is essentially the same as for the previously discussed percentile ranks of predicted overall grade point averages in various groups. These percentile ranks show how the predicted grades of the prospective student in specific courses compare with those of students who have completed at least one semester in these courses at this institution. The official who coordinated the institution's research participation designated the courses (as listed) on

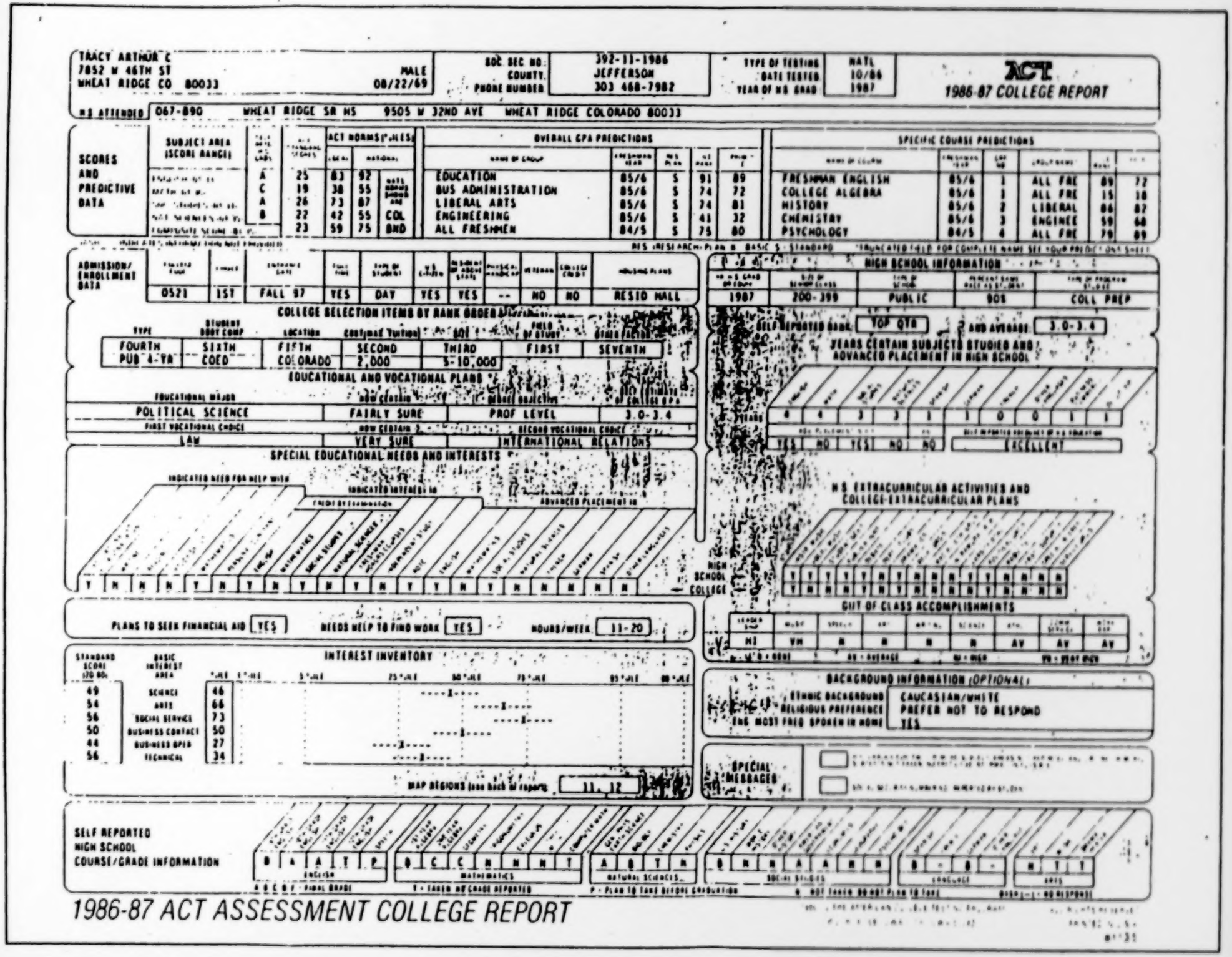
which the information is based. The freshman year on which the grade predictions were developed is provided, followed by the Standard Research Service group number and name. This information is provided to indicate the *nature* of the subgroups for interpretive purposes.

* * * * *

Grade Expectancies in Specific Courses

Interpretation of these grades expectancies in specific courses is similar to that previously discussed for overall grade expectancies in various groups. These data describe the probability that the prospective student will earn a grade of C or higher in each of the give courses listed.

In this example, the chances are 72 in 100 that the student will earn a C or higher in the freshman English course at this institution. These predictive figures represent the best interpretations that can be made about a prospective student's *academic* abilities from the information that ACT routinely reports to its participating institutions. The figures are directly relevant to performance *at the particular institution* each of the test scores and high school marks has been weighted in accordance with special institutional equations to forecast future achievement. Since prediction is never precise, statements about the *probability* of achieving at a certain *level* are more realistic than predictions of a specific grade point average.



1986-87 ACT ASSESSMENT COLLEGE REPORT

Sample College Report

Admissions/Enrollment Information

This is the code number of the institution to which the report is sent.

This indicates the institution's rank among those chosen by the student to receive reports. Because a student may list scholarship agencies first on the registration folder, a college may appear on the report as a second or third choice, but actually be the student's first *college* choice.

An S is reported for additional score reports. An A or C is reported for residual testing. Module A includes the ACT Assessment, the Student Profile Section, the ACT Interest Inventory, and basic student identification. Module C includes only the four ACT Assessment subtests and basic student identification.

This indicates U.S. citizenship and legal residence in the state given as a home address.

This indicates whether the student has a physical handicap or disability requiring special services or provisions at the college attended. (Only institutions meeting certain guidelines may receive this information.)

The item appears on the SPS as follows:

Many colleges make special provisions or offer programs for students with certain types of physical disabilities. The following item provides colleges with a way to communicate with prospective students about these provisions and programs. Colleges have indicated to ACT that your response will be used only for this purpose.

I have a physical handicap or diagnosed learning disability that may require special provisions or services from the college I attend.

ADMISSION/ ENROLLMENT DATA	COLLEGE CODE	CHOICE	ENTRANCE DATE	FULL TIME	TYPE OF STUDENT	U.S. CITIZEN	RESIDENT OF ABOVE STATE	PHYSICAL HANDICAP	VETERAN	COLLEGE CREDIT	HOUSING PLANS
	0521	1ST	FALL 87	YES	DAY	YES	YES	--	NO	NO	RESID HALL

This indicates the approximate date the student plans to enter college. If the student is enrolled in college at the time of testing, ENROLLED will be indicated.

Here is the item as it appears in the Student Profile Section (SPS) of the ACT Assessment:

I plan to enter college in
January/February 1987 .....
March/April 1987 .....
May/June/July 1987 .....
August/September/October 1987 .....
November/December 1987 .....
January/February 1988 .....
March/April 1988 .....
May/June/July 1988 .....
August/September/October 1988 .....
I am currently enrolled in college .....

This indicates whether the student plans to enroll as a fulltime student and plans to attend classes primarily during the day (DAY) or night (NIGHT).

A YES indicates the student has served or is serving on active duty with the military forces at the time of testing.

This indicates whether the student has earned college credit at the time of testing.

This indicates where the student plans to live while attending college.

Choices include:

residence hall .....
off-campus room or apartment or own home .....
parents' or relative's home .....
married student housing .....
fraternity or sorority .....

This indicates the rank order of importance of various factors to a student in selecting a college. The factors are:

Type of institution (private, public; 4-year, 2-year)
Male/female composition of student body (for example, all male, all female, coeducational)
Location (state or region)
Tuition, cost
Size of enrollment
Field of study (major, curriculum)
A factor other than those listed above

In addition to ranking the factors in terms of importance, the student also indicates specific preferences on five of the factors. In the example below, the student prefers a college offering the appropriate field of study (political science); having a maximum tuition (cost) of $2,000 per year; having 5,000-10,000 students; under public control; located in Colorado; with a coeducational student body.

COLLEGE SELECTION ITEMS BY RANK ORDER

TYPE	STUDENT BODY COMP.	LOCATION	COST/MAX. TUITION	SIZE	FIELD OF STUDY	OTHER FACTOR
FOURTH	SIXTH	FIFTH	SECOND	THIRD	FIRST	SEVENTH
PUB 4-YR	COED	COLORADO	2,000	5-10,000		

Educational and Vocational Plans

Major Academic Field of Interest

This section reports the program of study the student plans to enter. The student may select a specific field (Political Science) or a general area (Social Sciences, general).

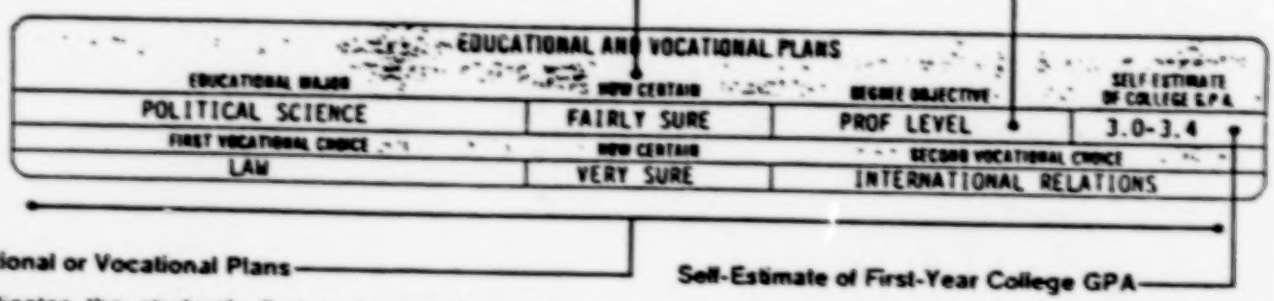
Certainty of College Major Choice

This indicates if the student is VERY SURE, FAIRLY SURE, or NOT SURE about current choice of program of study.

Highest Level of Education Student Expects to Complete

Here is the item as it appears in the Student Profile Section of the ACT Assessment:

What is the highest level of education you expect to complete?
- Vocational/technical program (less than 2 years) . .
- Two-year college degree . . . . . .
- Bachelor's degree . . . . . .
- One or 2 years of graduate study (MA, MBA, etc.) . . .
- Professional level degree (PhD, MD, LLB, JD, etc.) . .
- Other . . . . . .



Occupational or Vocational Plans

This indicates the student's first and second vocational choices and how certain the student is of the first choice.

Self-Estimate of First-Year College GPA

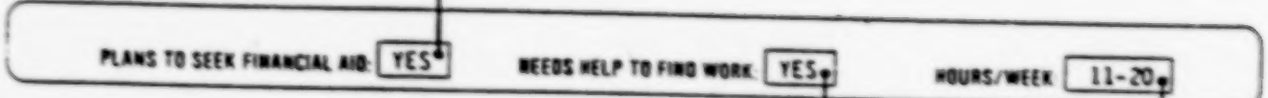
The student indicates an estimate of first-year college GPA ranging from 0.5-0.9 (D- to D) to 3.5-4.0 (A- to A).

Special Educational Needs and Interests

These are the items as they appear in the Student Profile Section of the ACT Assessment.

The next four questions ask for information about financing your college education, which will be useful to college financial aid officers. Use the responses below to answer items 56-57.
- Yes, applies to me . . . . . Y
- No, does not apply to me . . . . . N

I expect to apply for financial aid to help meet college expenses.



I expect to work while attending college and would like help in finding employment.

About how many hours per week do you plan to work during your first year of college?
- None . . . . . .
- 1-10 . . . . . .
- 11-20 . . . . . .
- 21-30 . . . . . .
- 31 or more . . . . . .

Special Educational Needs, Interests, and Goals

Many colleges offer special assistance for the individual development of students. You may wish to seek such assistance. Please respond Y or N to each item (19-24).

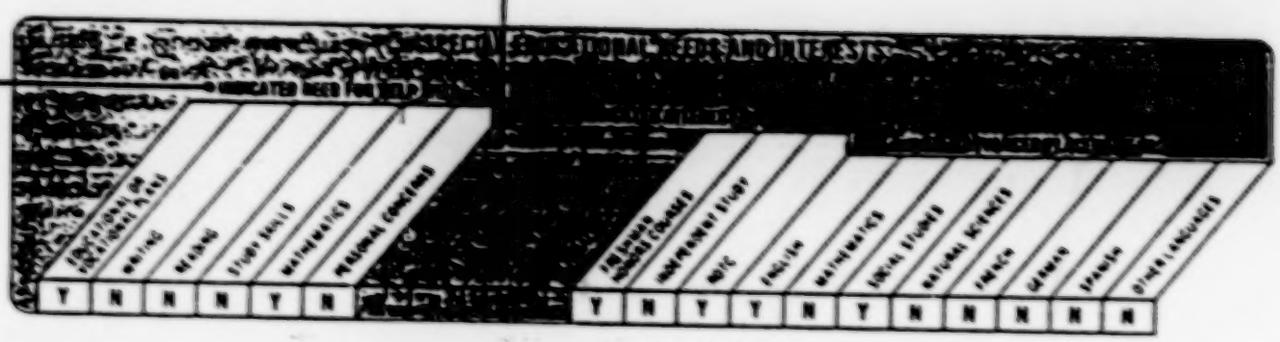
Yes, applies to me ..... Y
No, does not apply to me ..... N

I need help deciding on my educational and occupational plans.
I need help in expressing my ideas in writing.
I need help in improving my reading speed and comprehension.
I need help in improving my study skills.
I need help in improving my mathematical skills.
I would like help with personal concerns.

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Some colleges allow students to receive credit for certain courses through the use of special testing procedures. Indicate in which subject areas you would be interested in obtaining credit by examination.

Credit by examination in English
Credit by examination in mathematics
Credit by examination in social studies
Credit by examination in natural sciences



The next questions (25-39) relate to special college programs designed for students who want and are able to pursue academic work of an enriched or accelerated nature. Please respond Y or N to each item.

Yes, I am interested and would like to be considered ..... Y
No, I am not interested ..... N

Freshman honors courses (designed to challenge academically superior students)

Independent study (a program of study with topics chosen by the student, approved by the college and supervised by a professor, often part of an honors program)

I am interested in participating in ROTC, NROTC, AFROTC, etc. (Reserve Officers' Training Corps).

Yes ..... Y
No ..... N

Advanced placement in English
Advanced placement in mathematics
Advanced placement in social studies
Advanced placement in natural sciences
Advanced placement in French
Advanced placement in German
Advanced placement in Spanish
Advanced placement in other language

The ACT Interest Inventory (UNIACT)

Holland, Roe and others have suggested that the domain of vocational interest can be represented by a relatively few basic types of interests. ACT Interest Inventory scales were developed to parallel Holland's six interest types (Holland, 1985). The following descriptions explain what each interest scale covers. Corresponding Holland types are shown in parentheses below the scale names.

SCIENCE (INVESTIGATIVE)	Investigating and attempting to understand phenomena in the natural sciences through reading, research, and discussion.
ARTS (ARTISTIC)	Expressing oneself through activities such as painting, designing, singing, dancing, and writing; artistic appreciation of such activities (e.g., listening to music, reading literature.
SOCIAL SERVICE (SOCIAL)	Helping, enlightening, or serving others through activities such as teaching, counseling, working in service-oriented organizations and engaging in social/political studies.
BUSINESS CONTACT (ENTERPRISING)	Persuading, influencing, directing or motivating others through activities such as sales, supervision, and aspects of business management.
BUSINESS OPERATIONS (CONVENTIONAL)	Developing and/or maintaining accurate and orderly files, records, accounts, etc.; designing and/or following systematic procedures for performing business activities.
TECHNICAL (REALISTIC)	Working with tools, instruments, and mechanical or electrical equipment. Activities include designing, building, and repairing machinery and raising crops/animals.

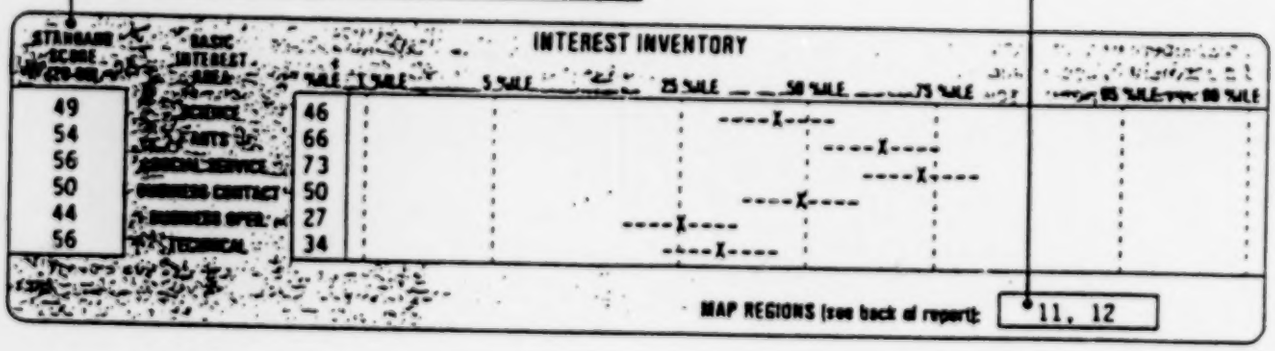
The Unisex Edition of the ACT Interest Inventory (UNIACT), introduced in the fall of 1977, appears on page 5 of *Registering for the ACT Assessment*. Students indicate whether they like, dislike, or are indifferent to each of 90 work-related activities.

Detailed information about UNIACT's rationale, development, and psychometric characteristics appears in the *Technical Report for the Unisex Edition of the ACT Interest Inventory (UNIACT)*. This report also includes interest profiles for over 40,000 persons in 352 educational and occupational groups. See page 34 for ordering information and for other references related to interest measurement.

The standard scores (mean=50, SD=10) and percentile (%-ile) scores (reported in standard error bands) are based on a national sample of high school seniors.

Students need a way to translate their UNIACT scores into college majors and occupations congruent with their interests. To this end, UNIACT results are reported as **Map Regions** that relate directly to ACT's Map of College Majors and World-of-Work Map. Students are encouraged to find "their regions" on the maps and to consider college majors and career families in their regions or nearby. For each career family, ACT's Career Family List (pages 38-39) provides typical occupations and programs of study.

The Map of College Majors and the World-of-Work Map were developed especially for persons who are undecided about their career goals. Persons with tentative goals may discover career options they otherwise may have missed. A more complete explanation of the use of UNIACT scores and the maps is provided on pages 28-33.



High School Information

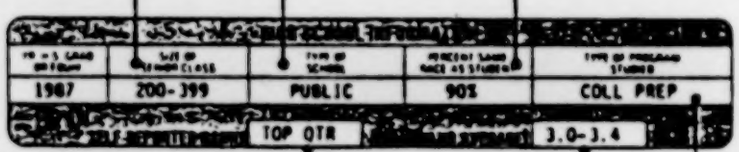
Here are the items as they appear in the Student Profile Section of the ACT Assessment.

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The number of students in my high school graduating class is (was)
- fewer than 25
- 25-99
- 100-199
- 200-399
- 400-599
- 600-899
- 900 or more

The high school from which I will (did) graduate can be best described as a
- public high school
- Catholic high school
- private, independent school
- private, denominational school
- military school
- other

The percentage of students in my high school who are (were) of racial background similar to mine is (was)
- 10% or less
- between 11% and 25%
- between 26% and 50%
- between 51% and 75%
- between 76% and 90%
- 91% or more



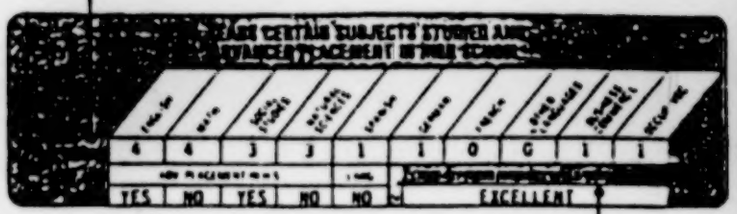
The program of high school courses I took can best be described as
- business or commercial
- vocational-occupational
- college preparatory
- other or general

My overall high school average is (was)
- D- to D (0.5-0.9)
- D to C- (1.0-1.4)
- C- to C (1.5-1.9)
- C to B- (2.0-2.4)
- B- to B (2.5-2.9)
- B to B+ (3.0-3.4)
- A- to A (3.5-4.0)

My class rank in high school is (was) (If you are not sure, give your best estimate.)
- top quarter
- second quarter
- third quarter
- fourth quarter

Years Certain Subjects Studied in High School and Advanced Placement

This indicates the number of years various subjects have been studied in high school. Half years are also reported. If the student was enrolled in advanced placement, accelerated, or honors courses, a YES will be indicated. A NO response may simply indicate that such courses were not available.



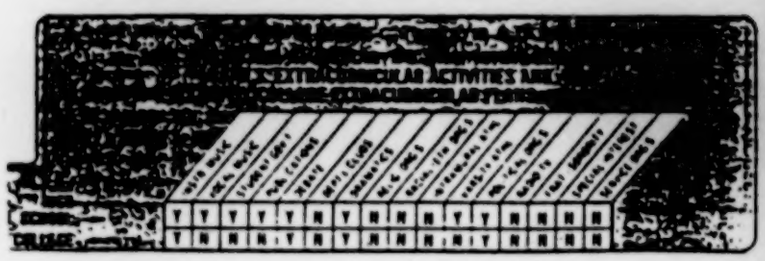
Adequacy of High School Education

This indicates how adequate the student feels the high school education has been. (The student may choose from the following alternatives:

- Very inadequate
- Below average
- Average
- Good
- Excellent

Extracurricular Information

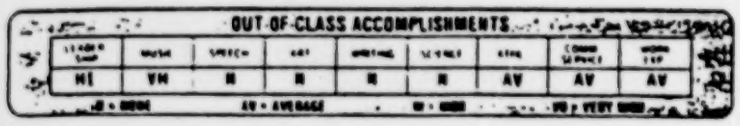
In the top row Y (yes) or N (no) designates whether the student participated in the given high school extracurricular activities.



In the bottom row Y (yes) or N (no) designates whether the student plans to participate in the stated extracurricular activities in college.

Out-of-Class Accomplishments

Examples of these accomplishments are shown below.



Examples of Out-of-Class Accomplishments

Leadership: was appointed to a student office; organized a school political group or campaign; participated in a non-school political campaign; participated in a student movement to change institutional rules, procedures, or policies.

Music: composed music; performed with a professional musical group (orchestra, band, choral group); performed in a school musical group; received a rating of "superior" in a state music contest; participated in a state music contest.

Speech: placed first, second, or third in a regional or state speech or debate contest; entered a school speech or debate contest; had substantial roles in high school or church-sponsored plays; read for a part in a high school play.

Art: finished a work of art (painting, ceramics, sculpture, etc., not as part of a course); exhibited a work of art in a statewide or regional show; had photographs, drawings, or other artwork published in a public newspaper or magazine.

Writing: had poems, stories, essays, or articles published in a school publication; wrote an original but unpublished piece of creative writing (not as part of a course); won literary award or prize for creative writing; had work of creative writing published in a school literary magazine or newspaper.

Science: did an independent scientific experiment (not as part of a course); won a prize or award (of any kind) for scientific work or study; placed first, second or third in a regional or state science contest; participated in a scientific contest or talent search.

Athletics: participated in one or more varsity athletic team events (football, basketball, baseball, etc.) while attending high school; earned a varsity letter in one or more sports in high school; received all-city, league, county, or state team award (including honorable mention); participated in two or more individual athletic activities (tennis, swimming, bowling, skiing, golf, etc.).

Community Service: won recognition or an award for a club or organization activity; taught in a church/synagogue, or led a religious service on a regular basis; worked as a volunteer in a hospital; was active in programs which assisted the community; participated in a program to assist children or adults who were handicapped mentally, physically, or economically.

Work Experience: held a regular part-time job; held a full-time job during the summer; started own business or service; supervised the work of others; managed the financial affairs of an organization.

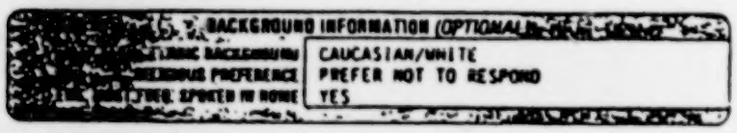
Students are asked to respond "yes" or "no" to the activities of each scale. The "yes" responses are summed and a rating of N=None, AV=Average, HI=High, or VH=Very High is assigned, based on the following table:

Area	Ratings			
	N	AV	HI	VH
Leadership	0	1-2	3-4	5-7
Music	0	1	2-4	5-7
Speech	0	1	2-3	4-7
Art	0	—	1-2	3-7
Writing	0	—	1-2	3-7
Science	0	—	1-2	3-7
Athletics	0	1-2	3-4	5-7
Community Service	0	—	1-2	3-7
Work Experience	0	1	2-3	4-7

The *Average* rating corresponds to a score falling at or below the 50th percentile of a representative sample of college-bound high school students; the *High* rating corresponds to a score falling between the 51st and 85th percentiles; the *Very High* rating corresponds to a score falling above the 85th percentile.

Optional Background Information

Each year, ACT mails to all institutions a form which the institution must approve and return to ACT if it wishes to receive these data.



Here are the items as they appear in the Student Profile Section of the ACT Assessment.

Colleges often provide special educational programs and opportunities for students from particular racial or ethnic backgrounds. The following item provides colleges with a way to communicate with you about these programs and opportunities.

Which of the phrases below best describes your racial/ethnic group as generally recognized by your family and friends?

- Afro-American/Black
- American Indian, Alaskan Native
- Caucasian-American/White
- Mexican-American/Chicano
- Asian-American, Pacific Islander
- Puerto Rican, Cuban, other Hispanic origin
- Other
- I prefer not to respond

Indicate your religious affiliation or preference.

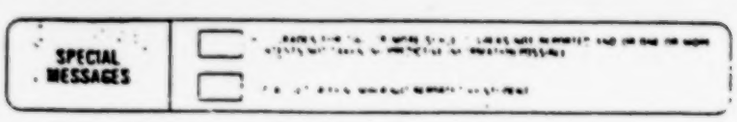
- Assemblies of God
- Baptist
- Southern Baptist
- Christian (Disciples of Christ)
- Christian Reformed
- Church of the Brethren
- Church of Christ
- Church of God
- Church of the Nazarene
- Eastern Christian Orthodox
- Episcopal
- Friends
- Jewish
- Latter-Day Saints
- Lutheran
- Lutheran—Missouri Synod
- Methodist
- African Methodist Episcopal (A.M.E.)
- Presbyterian
- Roman Catholic
- Seventh Day Adventist
- United Church of Christ
- Other
- None
- I prefer not to respond

Is English the language most frequently spoken in your home?

- Yes — Y
- No — N
- I prefer not to respond — 0

Special Messages

If either of these messages applies to the student, an asterisk will be printed in the appropriate box.



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Self-Reported High School Course/Grade Information

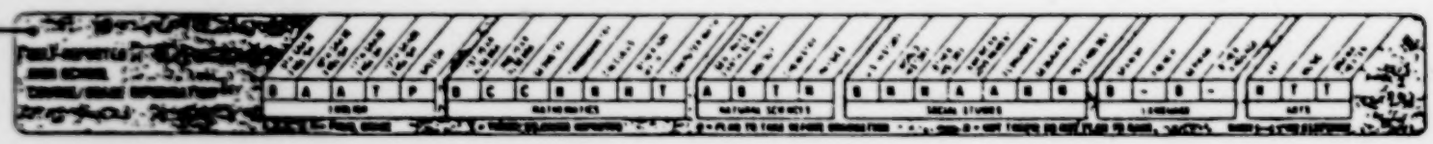
850

This portion of the College Report provides a listing of courses taken and grades earned in 30 college-preparatory high school courses. For each course, students registering to test on a national test date are instructed to select an oval in one of the following columns:

HAVE TAKEN OR AM TAKING (I have completed or am now enrolled in this subject.)	HAVE NOT TAKEN, BUT BUT WILL: (I have not taken this subject, but plan to take it prior to graduation.)	HAVE NOT TAKEN, AND WILL NOT: (I have not taken and do not plan to take this subject.)

Students are also instructed to report their last grade earned in courses already completed (A, B, C, D, or F). This information for each course is coded on the College Report as follows:

N = Have not taken, and will not
P = Have not taken, but plan to prior to graduation
T = Have taken, but no grade reported
A = Have taken, final grade = A
B = Have taken, final grade = B
C = Have taken, final grade = C
D = Have taken, final grade = D
F = Have taken, final grade = F
"—" = No response



The Basic Research Service

This plan supplies analyses of the relation between ACT data (ACT standard scores and high school average) and first-term overall college grades, and develops prediction equations for forecasting the performance of prospective students. The plan simplifies the responsibilities of the participating college and results in a brief, easy-to-understand report. Small colleges, newly participating colleges, or those with a limited staff often prefer this plan to the Standard Research Service.

The Standard Research Service

This plan provides a description of academic abilities and achievements of the current freshman class and develops the prediction equations used in forecasting the performance of future students. A comprehensive analysis is provided of precollege information, which includes ACT test scores, high school grades, and, if desired, locally collected information, and of first-year or first-semester achievement for as many as nine different groups of students. A summary report is included. Overall grades and grades in four specific courses or subject areas are used.

This plan makes possible the analysis of as many as 40 specific course grades in addition to 10 overall grade point averages. As in the Basic Research Service, regression equations developed in the analyses are used to furnish academic predictions on score reports for ACT-tested students in subsequent years.

A college may also choose to report as many as five locally collected measures for each student group. Research service analyses then provide comparisons of these measures with standard ACT predictors.

ACT Enrollment Information Service (EIS)

With the projected decline in the number of high school graduates over the next decades, postsecondary institutions are becoming increasingly concerned about enrollment maintenance and are seeking more effective ways to monitor and evaluate the student recruitment/admissions process. ACT developed the Enrollment Information Service to provide institutions with market information useful in the recruitment and retention of students.

EIS consists of two components—the Market Analysis Service and the Yield Analysis Service; both are derived from the data base generated by the approximately one million college bound students who write the ACT Assessment each year. EIS formats this data base into tables that focus on *student characteristics* (Act Composite Score intervals, sex, family income intervals, racial/ethnic background) and *college choice factors* (size of college preferred, type of postsecondary institution preferred, postsecondary institution choice, planned educational major, plans to attend in-state/out-of-state).

Both the Market Analysis Report and the Yield Analysis Report present data in two tabular formats. Table 1 organizes the identified characteristics and choice factors by ACT Composite Score Intervals, and Table 2 organizes the identified characteristics and choice factors by Planned Educational Major.

The Market Analysis Report provides a detailed blueprint of an institution's market area and can help in identifying new areas with high potential. The Yield Analysis Report allows an institution to evaluate its success in attracting various types of students from the identified segments and to compare the proportion of students from a particular segment that express an interest in the institution with the proportion that enroll in the institution.

During the 1986-87 academic year, the Enrollment information Service with be available in all 50 states. For more information, contact the ACT regional office serving your state.

ACT Student Need Analysis Service

ACT has established its Student Need Analysis Service to help students applying for financial aid demonstrate their eligibility for assistance. This service collects, analyzes, and disseminates demographic and financial information on which about 4,000 institutions and agencies base the awarding of scholarships, loans, and other financial assistance.

To apply for financial assistance at a postsecondary institution or scholarship agency using the ACT Student Need Analysis Service, a student obtains an ACT Family Financial Statement (FFS) packet from a high school counselor, a college and administrator, or directly from ACT. FFS packets—each containing an FFS with instructions, a list of institutions and agencies accepting ACT need analysis reports, and, in a few states, a Student Data Form—are mailed to all high schools each year in late fall. The FFS, a mark-sense form designed for rapid processing and reporting, collects financial information from the student and family. This information is treated confidentiality. Because some of the data can be copied straight from the federal tax return, it is accurate and easy to report. The student also may use the FFS to apply for a Pell Grant, with no additional charge to the student. The Pell Grant program communicates directly with the student via a Student Aid Report (SAR).

The student fills out the FFS and designates institutions or agencies to receive the financial aid information and then sends it to ACT along with a processing fee for

reports sent to recipients other than the Pell Grant program. If the FFS packet includes a Student Data Form, the student also fills it out and sends it to ACT in the return envelope with the FFS. From the information on the FFS, ACT produces a Student Financial Aid Report (SFAR). This computer document, which shows information reported on the FFS, is sent to the student and family for verification and, if necessary, updating. If incorrect data were submitted on the FFS, or if circumstances have changed, the student can use the SFAR to revise data and to request new reports. The SFAR also notifies a student of any special requirements of the institutions and agencies receiving need analysis reports.

PLAINTIFF'S EXHIBIT 295i

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
4			1	1	1		1	1	5
									.10
5	1	2	4	6	4				17
									.2
6	1	4	26	8	9	3		2	53
									.5
7	3	16	30	34	18	4	1	6	112
									1.0
8	8	12	69	46	20	13	2	3	173
									1.5
9	4	26	82	86	33	17	2	5	255
									2.3

PLAINTIFF'S EXHIBIT 295i – Continued

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
10	6	27	92	132	57	44	1	6	365 3.3
11	4	19	94	197	63	64	4	7	452 4.0
12	2	25	118	194	95	76	14	8	532 4.7
13	3	19	104	203	119	97	22	12	579 5.2
14	1	19	91	160	135	140	24	11	581 5.2
15	1	21	115	225	177	177	39	15	770 6.9
16	1	21	102	204	173	186	41	10	738 6.6

PLAINTIFF'S EXHIBIT 295i – Continued

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
17		11	72	199	143	221	49	11	706 6.3
18	2	12	68	190	176	211	65	10	734 6.5
19		3	55	135	153	230	73	8	657 5.9
20	2	5	48	126	137	231	98	9	656 5.8
21	2	2	30	94	122	244	109	11	614 5.5
22		4	29	92	111	234	132	2	604 5.4
23		4	20	71	91	206	137	4	533 4.7

PLAINTIFF'S EXHIBIT 295i – Continued

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
24	1		15	48	74	203	164	3	508
									4.5
25		2	6	34	54	171	140	4	411
									3.7
26	1	2	4	14	36	114	152	2	325
									2.9
27			2	12	33	97	165	1	310
									2.8
28				5	19	77	109	3	213
									1.9
29				3	5	30	97	1	136
									1.2
30			1	1	3	14	79	1	99
									.9

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PLAINTIFF'S EXHIBIT 295i – Continued

WHITE 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
31					1	9	41		51
									.5
32						4	27		31
									.3
33							7		7
									.1
34							2		2
									.0
Column Total	43	256	1278	2520	2062	3117	1797	156	11229
	.4	2.3	11.4	22.4	18.4	27.8	16.0	1.4	100.0

Number of missing observations – 2

859

PLAINTIFF'S EXHIBIT 295j

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
2			1						1 .0
3			2	4		2			8 .2
4	1	4	11	11	3	3	1		34 .7
5	1	15	22	27	11	3		2	86 1.7
6	2	15	62	80	21	12	1	5	198 3.9
7	4	31	88	124	50	39	1	5	342 6.8
8	1	24	97	174	67	53	1	7	424 8.4

PLAINTIFF'S EXHIBIT 295j – Continued

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
9	3	21	93	160	81	59	8	12	437 8.6
10	2	21	98	173	89	90	9	4	486 9.6
11	3	8	64	192	90	85	10	8	460 9.1
12	1	15	64	122	85	94	14	6	401 7.9
13	1	5	42	109	89	94	19	9	368 7.3
14	1	4	33	93	77	95	14	1	318 6.3
15		3	25	78	68	86	20	7	287 5.7

PLAINTIFF'S EXHIBIT 295j – Continued

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
16		4	17	56	67	83	18	2	247 4.9
17	2	1	11	48	37	71	23	2	195 3.8
18		3	1	26	25	62	30	2	149 2.9
19		1	4	26	20	49	28	2	130 2.6
20		3	4	10	21	52	38	1	129 2.5
21			6	7	12	61	28	3	117 2.3
22		1	1	5	12	31	26	1	77 1.5

862

PLAINTIFF'S EXHIBIT 295j – Continued

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 1	1.0-1.4 2	1.5-1.9 3	2.0-2.4 4	2.5-2.9 5	3.0-3.4 6	3.5-4.0 7	Else 8	Row Total
23			1	4	8	21	21		55 1.1
24				3	4	10	14		31 .6
25				5	5	13	11		34 .7
26				1	3	12	10		26 .5
27					2	5	6		13 .3
28					1	2	4		7 .1

863

PLAINTIFF'S EXHIBIT 295j – Continued

BLACK 1985-86 ACT-TESTED MS GRADUATES HSGPA BY ACT COMP SCORE
UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSS TABULATION OF
ACTC BY HSGPA

Count / ACTC	HSGPA 0.5-0.9 (1)	1.0-1.4 (2)	1.5-1.9 (3)	2.0-2.4 (4)	2.5-2.9 (5)	3.0-3.4 (6)	3.5-4.0 (7)	Else (8)	Row Total
29							4		4
									.1
30							2		2
									.0
Column Total	22	179	752	1538	948	1187	361	79	5066
	.4	3.5	14.8	30.4	18.7	23.4	7.1	1.6	100.0

Number of missing observations – 0

PLAINTIFF'S EXHIBIT 316

BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING

Mission Statements

November 19, 1981

Premise: The general purpose of mission statements is to provide appropriate differential roles of various universities. The general objective shall be quality performance of assigned and approved program endeavors. All programs are subject to periodic review by the Board of Trustees in terms of need, viable size, and effective performance. Based upon program reviews, the role and scope of any university may be adjusted from time to time. A review of all existing academic programs shall be completed by April of 1984.

Proposed new programs outside of the present role and scope of an institution would require extraordinary justification before being considered by the Board of Trustees. Specialized programs outside the basic mission assigned to an institution would require an outstanding report on the academic program review to remain at that institution. The question of unnecessary duplication of programs would be addressed in the academic program review. No new program requests will be honored at any institution until all programs at that institution eligible for accreditation have been accredited.

Comprehensive Universities: Mississippi State University, the University of Mississippi, and the University of Southern Mississippi will continue to offer a number of programs on the doctoral level. However, each institution will be expected to provide leadership in the state in certain disciplines. New program requests will be given priority at those institutions selected for leadership in the discipline in which the program is being requested. Program actions on academic program review will be guided by the leadership assignments. An institution will be expected to become or to continue to be regionally and nationally competitive in the disciplines to which it has been assigned a leadership role. The 1981 Mississippi Legislature has expressed a desire to specially fund "Programs of Excellence". The determination of leadership responsibilities plus the possible additional monetary support should heighten the achievement of national recognition. Determination of leadership and responsibilities by the Board of Trustees would be subject to periodic review. The leadership responsibilities should be assigned as follows:

Mississippi State University

Agriculture and Forestry
Architecture
Biological Science
Engineering
Veterinary Medicine

University of Mississippi

Art
Law
Letters
Foreign Language
Mathematics

Pharmacy
Physical Sciences
Public Affairs
Community and Regional Planning
Social Sciences

University of Southern Mississippi

Communications
Computer Science
Home Economics
Library Science
Marine Science
Music
Polymer Science
Psychology
Social Work
Technology

University of Mississippi Medical Center

Dentistry
Health Related Professions
Medicine
Nursing

Each institution is expected to remain actively involved in organized research. The comprehensive universities should continue to be the centers for the development of new knowledge and the expansion of existing research.

These three universities are expected to continue to provide academic credit courses and non-credit activities in their centers and in other locations where cost effectiveness can be justified. The Board's policy concerning off-campus activities will continue.

Urban University: Jackson State University stands alone in this category because of its location in the capital city. Jackson State should develop a broader mission for the institution that will be directly related to its urban role. Part of this mission will be to enhance the overall quality of the institution that will require among other things a lesser participation by marginal students. The institution is expected to engage in more organized research that is directly related to the urban area of Jackson, Mississippi. Jackson State may offer with Board permission off-campus credit activities when demand warrants. Jackson State should engage in non-credit service activites off-campus within their resources.

Regional Universities: Alcorn State University, Delta State University, Mississippi University for Women, and Mississippi Valley State University should initially continue to offer their present baccalaureate programs. These offerings would be subject to change as a result of the program review or other determinations made by the Board of Trustees. Alcorn State University and Mississippi Valley State University shall continue their present graduate offerings in the field of eduction. Alcorn State and Mississippi Valley State shall have until the summer of 1984 to gain accreditation for their master's programs in education. If accreditation has not been granted within that time frame, no new graduate students may be admitted to the programs. The Master of Science program in Agriculture at Alcorn State and the Master of Science program in Environmental Health at Mississippi Valley State will be closely scrutinized through the program review process.

Mississippi University for Women may offer graduate work in Home Economics within the limited areas of Home Economics Education, Merchandising, Child Development, and Textiles. Graduate work in Education may continue to be offered contingent upon gaining NCATE accreditation for the graduate level by the summer of 1984. Delta State may continue its graduate offerings in Education. Delta State may continue its graduate work in Business with the stipulation that the institution shall establish a timetable for accreditation that will be presented to the Board in March of 1982.

No regional university shall grant specialist degrees with the exception of Delta State in the areas in which accreditation has been earned. Regional universities with doctoral programs shall be subject to an intensive evaluation of those doctoral programs four years after the date of the approval by the Board of Trustees to determine continuation. Under no circumstances should additional doctoral programs be established at regional universities.

Delta State University will be allowed to continue to engage in off-campus academic credit offerings within the area assigned to that institution. Mississippi Valley State University will be encouraged to continue its participation in Greenwood with Board-approved courses, and Alcorn State University should continue its involvement in the Vicksburg consortium with Board-approved courses. There is no expectation that Alcorn State, Mississippi Valley State, or Mississippi University for Women will be engaged in academic credit offerings in other locations than those mentioned above except under extraordinary circumstances and only with Board approval. The

Board's policy concerning off-campus credit activities will continue. Non-credit service activities for these four institutions should be limited to on-campus except where extraordinary need exists. There is no expectation for organized research at these institutions.

Present admission standards are not the same at all of the regional universities. This is desirable and should be continued.

PLAINTIFF'S EXHIBIT 350

[79] **DEPOSITION OF JOSEPH ANZALONE**

* * * * *

11/14/81

Q. At any time during your employment with the ACT program, have you communicated with officials in Mississippi with respect to admissions policies at four-year institutions?

A. Yes.

Q. Could you describe each such contact? When was the first?

A. Oh, gosh. The first that I can recall was in early 1979, I think in February of 1979. At that time, the Board was reviewing admissions standards, I believe, or the impact of its standards; and I met with them then. I didn't meet with "the Board." I met with a committee, I guess, and individuals.

Q With whom did you meet?

A. I met with—and I cannot identify the Board members by name because I do not know them on a personal basis. There were several members of the Board of Trustees there, including the chairperson, as I recall, at that point in time, and the executive secretary of the Board; and probably one or two other staff members were in the room.

* * * * *

[88] Q. Did you discuss the impact that the 15 ACT score had on enrollment of black students at the institutions using the 15 ACT cutoff?

A. As I recall, the impact of such a score was discussed at the meeting. Present at the meeting were the presidents of the three historically black universities in the state, and they certainly indicated concern about that, and each at different times, I guess, in the course of that meeting.

Q. Did you express any opinion at that meeting as to the impact of the 15 cutoff on enrollment of blacks at the institutions using that cutoff score?

A. I probably indicated that the date—at least that available at the national level—spoke for itself, in the sense that we recognize what the national norms group for [89] black students reveals; and also, the class—the enrolled class profile reports of the historically black institutions, which, of course, reflect the actual enrollment locations—or certainly did at that time—of a large number of black students in the state, indicated that those—that that score distribution—that those means were below the state level. Below the state average is what I should say.

* * * * *

1/7/82

[64] Q. Have institutions in Mississippi conducted, with the assistance of the ACT Program or by themselves, studies of differential validity by race?

A. Let me try to remember the subgroups. I'm not aware of institutions exercising that option. The option is certainly there. They can specify—They can characterize any particular subgroup of students as long as it meets certain N-count requirements and so forth. I'm not aware that any of the universities in recent years have elected, for example, a black subgroup as a part of the standard research designs. I'm not aware that they have, at least in recent years.

Q. Can you name any Mississippi four-year institution that has at any time conducted a study of differential [65] validity based on race?

A. Would you define—Just for clarification, would you define "differential" validity? Are you talking about "Let's do a validity study as it relates to the test and the high school averages for, say, black students and also a parallel study at the same time for the white students who are enrolled"?

Q. Yeah.

A. No, I'm not aware of that occurring. Obviously, the validity studies that do exist for minority students exist at institutions such as Jackson State University, where the majority of the students they've identified in their research design are minority—or black.

Q. But at the traditionally white institutions, you are aware of no institution that has conducted a study of differential validity by race. Is that correct?

A. Not as a part of the ACT Assessment Program, as memory serves me. I would be glad to go back over several years and try to verify that if that is important.

Q. I would be grateful if you could verify that.

A. It would be a matter of identifying every subgroup that was established at, say, a Mississippi State University or another institution and discovering if at any one year the institution did identify black students as a subgrup. I'm not aware, though, of that having occurred [66] recently.

Q. Isn't it a policy of the ACT that institutions using the instrument should conduct such differential validity studies according to different subgroups that they serve?

A We suggest that they use subgroups for a variety of purposes. For example, look at engineering students as a subgroup, or look at women students as a subgroup. Minority students certainly could be identified as a subgroup. I'm not aware that—as I said, that that has been done. You know, we recommend that they look at different kinds of subgroups in their population of students.

Q. If a differential validity study at a particular school showed that black students with ACT scores of 9, 10, 11, 12, 13 and 14 had approximately the same mean freshman grade-point average as black students with a 15 ACT score, would that suggest to you that for black students as a group the 15 ACT cutoff score ought to be reexamined?

MR. STEPHENSON:

I'm going to object to the question to the extent that I believe that it's over broad by encompassing the scores 11, 12, 13 and 14 within one question. I'm not certain that I would know the context in which any answer was framed. I'd call upon counsel to use two scores at one time and no more, if he could. I would assume that there would be a differen- [67] tiation that could be made between a composite score of 11 and one of 14.

Q. [Mr. Heubert] Would you like me to repeat the question, Dr. Anzalone, or –

A. Please, just because of the time.

Q. If a study showed that black students at an institution where there was a cutoff score of 15 –

A. Okay. Black students. Okay.

Q. That's the group we're limited to right now.

A. Okay.

Q. That the mean freshman grade-point average for students with a 14 was equal to or higher than the mean freshman grade-point average of black students who had a 15 ACT, would that suggest to you that the 15 cutoff should be reexamined with respect to black students?

A. The same would be true if they were white students.

Q. But that's not the question I asked.

A. Okay.

Q. If that finding were made, do you think it would be appropriate to reexamine use of that 15 cutoff for black students?

MR. STEPHENSON:

Assuming the educational policy decisions at the institution at the state level remained the same.

[68] A. Again, Mr. Heubert, we should not be surprised to find at some point in time or somewhere that kind of information, because again we realize that the 15

is – does have a standard error of one and that there would be – very, very similar between students who score 14 and students who score 15. They essentially represent the same kind of ability level, if I could couch it that way – and maybe I'm incorrect in doing that; but basically there's very little difference between a 14 and a 15.

* * * * *

[101]They're based on – I'm looking at the standards for the institutions. You are identifying as high risk – In addition to students, for example, at Delta State, Mississippi State and so forth, you're indicating that in addition to students admitted with a 15, the institution may enroll a number equivalent to – Is that?

Q. Um-hmm.

A. I'm aware that's a part of the admissions standards.

Q. Are you aware that prior to adoption of this 5% limit on students who could enter with ACT scores below 15 there was a policy by the Board of Trustees to allow probationary enrollment at all of the five traditionally white institutions with ACT scores of 13 and 14?

A. I haven't seen that policy.

Q. Would a policy that permitted probationary admission of students with 12's, 13's and 14's allow more students to get in without the 15 than the current 5% restriction?

A. Of course.

Q. Do you have any idea why the Board of Trustees adopted a new policy for high-risk students which reduced the number of students who were eligible for admission with ACT scores below 15?

A. No, I don't know why they did that.

* * * * *

[106] Q. Yes.

A. On the composite. And how many black students?

Q. If the mean is 12, then I assume that 50% fall below the mean.

A. No, I meant the number. We were talking about how many would be eligible to fit into these categories. I assumed that's what you meant.

Q. My question was: Isn't it true that with that policy that we just described at Mississippi University for Women, 15 for regular admissions and a minimum of 12 for high-risk admissions, that 50% of the black students who take the ACT in Mississippi would be ineligible for either regular or high-risk admission at Mississippi University for Women?

A. Those scoring below 12,

Q. Dr. Anzalone, turning to Exhibit 1 to your deposition, your recommendations: Could you read your second recommendation aloud, please?

A. Recommendation, or—

Q. Conclusion. I'm sorry.

A. "The specification of minimum ACT composite score provides reference points for unqualified admission decisions at the various institutions and also provides for referrals to developmental studies and for exceptions to the minimum admission standards."

Q. Are you saying in that conclusion that the Board [107] of Trustees' policies provide clear indications to students of whether they can get into an institution or whether they should be sent to developmental education programs?

A. Well, it indicates that—In my judgment, the publication of the minimum standard scores in both the Board policies and in institutional catalogs stand there; and as students complete the Act, finish high school, they

can even know in advance about their admission possibilities. That's—I think that's what I was attempting to get at there: that a student obviously would know that if he had scored at or above that particular threshhold, then the student would clearly be admissible.

Q. You're saying basically that this is a clear policy that students can understand?

A. I think in conjunction with the typical things that students see—such as the college catalog, the university brochures and admissions application forms and so forth—where the institution states that "This is the admissions policy."

Q. Would you say that if an admissions catalog—I'm sorry—an official catalog contained statements about admissions requirements different from those set forth in the Board of Trustees policy, that that would not be very clear?

A. Well, there might be a contrast. You're indicating that the Board policy might be reworded or interpreted

* * * * *

3/18/87

[87] Q. Is participation in the Predictive Research services, does that require an additional cost to the institution?

A. It requires no additional cost to the institution.

* * * * *

[171] Q. So, I would take it that you would also say that you have not seen any subgroup validity study by race since your last deposition?

A. I'm not aware that any of the institutions that have participated in ACT's predictive research studies have included race, a race designation as a subgroup.

Q. Isn't it ACT's recommendation in its policies that subgroup validity studies be done whenever possible?

A. Yes.

Q. And it is possible, isn't it, for Mississippi because the data is available; isn't that right?

A. Yes, it would be possible.

Q. But you're not aware of it being done since the time of your last deposition, which the second date was January 7, 1982?

A. I'm not a—right. I'm not aware of it being done.

Q. Did you, in your preparation for this testimony, ask if it had been done?

A. I did not. I reviewed only the readily available data that I had at hand.

Q. Would you agree that it's particularly [172] important to do such studies if changes are made in standards which—admission standards which decrease the pool of black students eligible to attend historically white institutions?

A. I think it's important to do validity studies any time the composition of the freshman class changes or there are significant changes in the standards themselves. Anything that would particularly affect, I think, the performance opportunities for students.

Q. The Board of Trustees' actions haven't satisfied the substance of the opinion you just expressed, have they?

A. I'm not aware that they have conducted those kinds of validity studies in terms of the ACT Assessment Program research services.

* * * * *

[176] Q. Haven't you seen data by race on ACT scores for Mississippi graduates at earlier times?

A. At earlier times. But, as I've said, I can't recall whether these proportions would be identical. I would not be surprised if they were similar.

Q. I asked—my question was whether there was a pattern of substantial differences with white students scoring substantially higher during the period of your service with ACT?

A. I would—I would believe so.

Q. Wouldn't you agree that that kind of [177] difference in pattern is common knowledge with respect to people who have positions like yours?

A. It would be common—fairly common knowledge that black students as a group would, indeed, perform at lower levels on the ACT Assessment that would white students as a group. The differences may be—may not be the same from state to state or even from year to year. But I think, in general, that would be the case.

Q. Would you agree that it would also be common knowledge of people like staff members of the Board of Trustees who work on admission standards?

A. I would believe that given their knowledge of ACT test data, institution by institution, that they would be aware that black students' scores would be lower than white students' scores, yes.

Q. Substantially lower?

A. Depending upon whether you were comparing black students at a particular institution or not, or black students in the aggregate.

Q. I mean black students in the aggregate.

A. Black students in the aggregate? Yes, I think that would be true.

Q. True meaning that it would be common knowledge of that category of persons?

[178] A. I think so.

* * * * *

[181] Q. But would you agree that when compared with test score patterns, that the pattern of grading shows

a lesser disparity between white students and black students?

A. I don't know. We're dealing with the same—all I can—all I can say is that there's a difference, obviously that there's difference. I don't know if I can compare the extent of the differences between the two indicators. There's a difference, obviously.

Q. You said you agreed that with respect to ACT scores 15 and above that, roughly, seven of ten white pupils and three of ten black pupils were above 15?

A. Uh-hum.

Q. So that the percentage—when you compared the percentages, it was more than twice the percentage—

A. Uh-hum.

Q. —of white pupils who were above the 15 as black pupils; is that right?

A. Uh-hum.

[182] Q. Is that right?

A. That looks right.

Q. It's not more than twice the percentage of white pupils who have grades above 3.0 than black pupils, is it?

A. No. It's about—I guess about half.

Q. Well, it's—the comparison of 30 percent—30.5 percent to 40—

A. 43.

Q. —point 8, it's the percentage of white students above 3.0 is not twice as large as the proportion of black students, is it?

A. No, it's not.

Q. Would you agree that, in general, the disparity in grade point average in the patterns between white and black students is lesser in magnitdue than the disparity in test scores?

A. Yes, I would agree to that.

Q. Wouldn't it follow from that, if one in an admission process placed emphasis on grades as opposed to test scores, that a larger proportion of the black population would be eligible?

A. Depending on the grade requirement specified.

Q. Meaning if the pattern of grades of black pupils to which we referred involved a pattern above [183] some minimum, is that what you mean?

A. Yeah. I think so. It would depend on, you know, where you started or where you ended up with a GPA requirement. A GPA requirement, I assume, could be—could be fairly high or might indeed have a greater range.

Q. ACT recommends that both test scores and high school grade point average be factors considered in admission 'selection decisions; is that right?

A That's correct.

MR. STEPHENSON:

Could you read the question back.

A. Or some other indication of high school rank—some other factors.

MR. STEPHENSON:

Now could you read the question back?

(Whereupon the question was read by the court reporter.)

A. The answer would be "yes."

MR. PRESSMAN:

Q. And wouldn't following that recommendation as it pertains to grade point average where there's a lesser racial disparityh provide for a more racially inclusive pool of eligible students than not including grade point average?

[184] A. I believe it could.

Q. Well, do you have some hesitancy in saying that it would?

A. Well, I haven't seen, you know, the construction of a model that would suggest which GPA's ought to be a part of such an admission standard.

Q. To your knowledge, do some colleges follow ACT's recommendation of using a variety of factors, including grade point average, in making admission/selection decisions?

A. Yes.

* * * * *

PLAINTIFF'S EXHIBIT 365

[6] **DEPOSITION OF LUCIUS S. WILLIAMS, JR.**

* * * * *

Then in 1975, I was interviewed at the University of Mississippi and hired there as assistant to the vice-chancellor for academic affairs and associate professor of education. And I'm still at the University of Mississippi.

Titles have changed a little bit, from Assistant to the Vice-chancellor. I was promoted to Assistant Vice-chancellor. It's a little different from assistant to the vice-chancellor.

[7] Q. Now, if you could give your rank or position change from that time until the present.

A. Okay. I came to Ole Miss, or the university, on December 19, 1975, as Assistant to the Vice-chancellor.

Q. Who was vice-chancellor there, please?

A. Vice-chancellor was Arthur Derosier at the time.

Q. Spell that?

A. Derosier, d-e-r-o-s-i-e-r.

During that first year, I developed a learning center as a support service for unprepared students. We offered tutorial services in math, reading English, and so forth. And of course, I was director of that learning center.

So now, I'm Assistant to the Vice-chancellor, director of the learning center, and Associate Professor of Education

Administration, where I taught two courses at the time in the School of Education.

In 1981 or '82, my title was changed to Assistant Vice-chancellor under Dr. Harvey Lewis, as the Vice-chancellor at the time.

Q. Was there any change in pay? Did you get a raise, Dr. Williams?

A. I'm not sure whether there was a raise that year or not. If I got one, it was a normal raise that [8] everybody else got. I don't recall any raise being associated with the – with the change in title. But I believe there was a raise for everybody that year.

Q. Let me ask you, then, assistant – could you compare and contrast for me assistant to the vice-chancellor and then you was assistant – the first job you were hired as Assistant to the Vice-chancellor. Now, you're Assistant Vice-chancellor. What's the difference? Are both of them administrative?

A. Yeah, they're both administrative; but when you become assistant – well, as assistant to the vice-chancellor, you do not have any particular authority over anything. When you become assistant vice-chancellor, you have a little more control over what you do. You can make some decisions on your own.

* * * * *

[19] Q. How many vice-chancellors do you have at the University of Mississippi?

A. I believe there are three – or four now.

Q. Let's say four. Now, could you name those?

A. The vice-chancellor for university relations, vice-chancellor for student affairs, the vice-chancellor for administration, and the vice-chancellor for academic affairs. Three.

Q. Where are you?

A. I'm under the vice-chancellor for academic affairs as Assistant Vice-chancellor.

* * * * *

[24] A. If you would put us in any kind of order there, I would be number three.

Q. But now, you not over in with the chancellor. You in another place.

A. No, I'm not with the chancellor.

* * * * *

[29] Was there a change in salary with this new position other than the normal raise, Dr. Williams?

A. No.

* * * * *

[47] Q. Were you given a raise with this new function over education?

A. The answer is, no.

Q. I'm not so sure I understand, but I'll try to ask you a question so I'm clear on my understanding here.

You were given another title, and that title was the Associate Dean of the School of Education.

A. That's correct.

Q. With that title, it required you to have an office in the School of Education; is that correct?

A. Yes.

Q. That title did not give you any additional money; is that correct?

A. That's correct.

* * * * *

[133] Q. Now, directing your attention to the time period wherein you had affiliation with the minority faculty vita bank. What was the purpose of the minority vita bank?

A. Was to increase the pool of applicants for hiring.

Q. And on an annual basis, approximately how many applicants vita's would you have on file?

A. I'd say about 200.

Q. On an average basis per year, approximately how many faculty persons were actually hired to have vita's in the minority vita bank?

A. I can recall two or three in the time period [134] that I maintanied the vita, and that was from about 1983 to 1985-'86. Two or three persons were hired from that vita.

Q. From the vita bank.

I don't know if Alvin asked you this question or not, but is the bank currently being maintained?

A. I don't know. I left that with the vice-chancellor.

Q. How did you go about obtaining vita's for the vita?

A. Two ways. One, we advertised in the Chronicle. And we also received resumes from people in general whenever they came in to the university. Somebody might send a resume, I'm looking for a job. It would find its way to me because if it was a minority, they would send it to me because they knew I was trying to help.

Q. Did you ever contact the traditional black institutions in the state to obtain their overflow applicants for various positions to become a part of your minority faculty vita bank?

A. No, I did not.

Q. During 1981-'82, do you recall whether or not there were any black academic deans at the university?

A. 1981.

Q. '81-'82?

[135] A. Academic deans?

Q. Black academic deans.

A. I don't recall ever having a black academic dean.

Q. Ever?
A. No.
Q. What about department chairpersons?
A. Well, Ron Bailey, the director of Afro American studies would be the closest thing to a department. And it is not a department. It's a program. So, no, I don't recall any black chairman of the department.
Q. Now, currently are there any black academic deans?
A. No.
Q. Department chairpersons, to your knowledge?
A. No.

* * * * *

PLAINTIFF'S EXHIBIT 366(b)

[54] **DEPOSITION OF DR. JOHN A. PEOPLES, JR.**

* * * * *

Q. My question, Dr. Peoples, is you have made the assertion that individual trustee favoritism has thwarted [55] programmmatic development at the black institutions. Now, if thats your opinion, I want to know the basis for it. If you'd like to withdraw the opinion, that's something else.
MR. CHAMBLISS: You can start with governors and go on with the whole—
THE WITNESS: May I go, please?
MR. STEPHENSON:
Q. Yes.
A. What I mean by that is that certain institutions had more alumni, has strung alumni on the Board of Trustees which would, in my opinion, tend to favor these institutions getting certain programs, whereas the historically black institutions at one time, for a long time, had no

alumni up through 74 because the first black member was a graduate of Tougaloo College and it certainly appeared that the institutions which had several alumni on the College Board were able to get programs, academic programs, that might well have gone to some of the historically black programs or to prevent the black institutions from getting programs on the ground that this would be duplication of their programs; and so, without saying individuals as such, I'm saying alumni of the historically white institutions, and they had several on the Board, College Board. That's what I mean by that.

* * * * *

AYERS VS ALLAIN

1. Historically Black Institutions (HBU) are at best an ancillary consideration of State higher education authorities.

2. Funding for higher education is weighted via formula to the disadvantage of HBU:

> Coursework high cost factors are generated mainly by the comprehensive universities
>
> Efforts to enrich HBU academic programs were rarely if ever encouraged but thwarted by repressive board policies,discriminatory mission assignments, individual trustee favoritism, and arbitrary program reviews.

3. The funding formula is basically enrollment driven:

> The admission standards are biased against the HBU, which through the inertia of previous *dejure* segregation carry the heaviest load of disadvantage students. As the ACT minimum admission score was increased, the enrollment of black students decreased throughout the system. But the heaviest attrition was

in the HBU. As a consequence, the enrollments of the three HBU have decreased approxiamtely 20% since 1979. On the other hand, with the exception of MUW which has a special problem, the HWU enrollments have increased or remained constant.

4. The effect of the enrollment changes has been a depressing impact on the funding of the HBU, which have received a steadily decreasing proportion of funds over the last ten years:

The overall number of blacks attending senior colleges has decreased precipitiously over the last 10 years.

The COMP TEST requirement has virtually eliminated black undergraduate enrollment in teacher education further diverting funds from the HBU.

5. Various means are used to concentrate resources into the HWU:

Special Bureaus
Research Centers
Centers of Excellence
Lead institutions in certain academic programs
Weighted funding by levels: lower, upper, graduate

The HBU have no such special means to get supplemental funding JSU, in 1980, set up a research center with funding from Mott foundation. Efforts to get College Board to fund when foundation support ran out were in vain.

6. The HBU have received significant funding for physical plant development over the last twenty years, but many of the edifices were not adequately equipped and most have not been adequately funded for maintenance.

John A. Peoples, Jr.
President, Retired
Jackson State University

PLAINTIFF'S EXHIBIT 367

Proposed Stipulation No. 91:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1972-73 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn Coll.	$14,082	$13,540	$10,816	$8,959
Delta State Coll.	17,339	14,783	12,082	8,949
Jackson State Coll.	17,308	14,240	11,886	9,664
Miss. State Coll. for Women	15,626	12,931	11,406	9,057
Miss. Valley State	13,355	13,266	9,720	8,813
Miss. State Univ.	19,121	14,535	12,235	8,798
University of Miss.	17,734	14,402	12,040	7,886
University of So. Miss.	17,927	14,259	12,702	9,367

RESPONSE

Stipulated as to average mean salaries.

Proposed Stipulation No. 93:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1974-75 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$16,657	$14,032	$11,585	$ 9,361
Delta State Univ.	18,236	16,021	13,181	10,536
Jackson State Univ.	19,093	15,489	13,108	10,312
Miss. State Univ.	19,268	15,438	12,758	9,327
Miss. Univ. for Women	17,123	13,948	12,011	10,474
Miss. Valley State Univ.	14,769	13,109	10,515	8,860
University of Miss.	19,148	15,752	12,944	9,522
University of So. Miss.	17,294	15,740	13,418	10,360

RESPONSE

Stipulated as to average mean salaries.

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1973-74 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn Coll.	$15,239	$13,214	$11,333	$ 8,707
Delta State Coll.	18,365	15,596	12,546	9,958
Jackson State Coll.	16,494	14,404	13,016	9,974
Miss. State Coll. for Women	16,429	13,284	11,307	10,072
Miss. Valley State	14,270	12,434	8,816	8,365
Miss. State Univ.	19,665	15,366	12,551	9,056
University of Miss.	18,839	15,289	12,657	8,357
University of So. Miss.	18,504	15,472	12,990	10,146

RESPONSE

Not stipulated. This alternative is proposed:

Proposed Stipulation No. 97:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1978-79 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$20,900	$17,845	$15,112	$12,059
Delta State Univ.	22,387	17,994	15,734	13,011
Jackson State Univ.	22,390	20,235	16,338	14,248
Miss. State Univ.	24,259	18,811	15,403	11,821
Miss. Univ. for Women	21,822	16,262	15,244	13,102
Miss. Valley State Univ.	19,682	17,360	14,016	11,978
University of Miss.	25,672	20,831	18,389	11,294
University of So. Miss.	23,570	19,289	15,818	13,158

RESPONSE

Stipulated as to average mean salaries.

Proposed Stipulation No. 98:

The following table accurately sets out the average salaries, by rank, of faculty members at each institution for the 1979-80 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r
Alcorn State Univ.	$21,516	$18,732	$15,715	$12,630
Delta State Univ.	23,041	18,624	16,469	13,901
Jackson State Univ.	21,903	20,446	17,236	14,060
Miss. State Univ.	28,966	20,914	17,537	13,076
Miss. Univ. for Women	22,171	17,945	16,431	14,015
Miss. Valley State Univ.	20,322	18,372	14,578	12,512
University of Miss.	28,593	22,238	17,525	12,357
University of So. Miss.	27,585	21,156	17,223	14,488

RESPONSE

Stipulated as to average mean salaries.

Proposed Stipulation No. 166:

The following table accurately sets out the average mean salaries, by rank, of faculty members at each institution for the 1957-58 academic year:

Institution	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A&M College	$4,725	$3,645	$3,357	$3,068	$3,417*
Delta State College	5,842	4,991	4,586	4,105	4,887
Jackson State College	5,692	4,213	3,600	3,408	3,931
Miss. Southern College	5,971	4,924	4,913	3,537	4,637
Miss. State Coll for Women	5,782	4,486	4,222	3,683	4,767
Miss. State Univ.	6,181	5,399	4,760	3,917	4,939
Miss. Vocational College	–	–	–	3,239	3,390*
University of Miss.	6,445	5,026	4,408	3,614	5,515

* Includes unranked teachers

RESPONSE

Stipulated.

Proposed Stipulation No. 167:

The following table accurately sets out the average mean salaries, by rank, for faculty members at each institution for the 1958-59 academic year:

Institution	Dep't Head	Prof.	Assoc. Prof.	Ass't Prof.	Inst'r	All Ranks
Alcorn A &M Coll.	–	$5,400	$4,338	$3,660	$3,326	$3,820
Delta State Coll.	6,469	6,175	5,590	5,155	4,557	5,547
Jackson State Coll.	–	6,920	4,980	4,335	4,170	4,888
Miss. Southern Coll.	6,959	6,207	5,467	4,683	3,800	5,196
Miss. State Coll. for Women	6,973	6,053	5,117	4,892	4,515	5,611
Miss. State Univ.	7,130	6,509	5,854	4,959	4,197	5,432
Miss. Vocational Coll.	–	6,166	4,364	3,556	3,390	3,955
University of Miss.	7,904	7,442	5,854	4,995	3,971	5,949

RESPONSE

Stipulated.

Proposed Stipulation No. 723:

The following accurately states, for fiscal years 1976 through 1981, the amount of Plan of Compliance funds requested by the Board of Trustees, the amount of Plan of Compliance funds appropriated by the State legislature, and other compliance-related appropriations:

	Plan of Compliance Budget Request	Plan of Compliance Appropriations	Compliance-Related Appropriations
FY 1976	$ 0	$ 0	$ 0
FY 1977	2,998,650	0	0
FY 1978	2,998,650	880,000	0
FY 1979	2,998,650	950,000	1,000,000*
FY 1980	1,266,372	775,000	0
FY 1981	775,000	775,000	30,000**

* NCATE accreditation for Alcorn and Mississippi Valley.

** UM Law Center compliance (*Robinson* v. *Williams* consent decree).

RESPONSE

Not stipulated. This alternative is proposed:

The following accurately states, for fiscal years 1976 through 1981, the amount of funds specifically requested by the Board of Trustees for direct funding of the Plan of the Plan of Compliance, the amount of such funds appropriated by the State Legislature, and other appropriations specifically earmarked for compliance-related activities:

	Plan of Compliance Budget Request	Plan of Compliance Appropriations	Compliance-Related Appropriations
FY 1976	$ 0	$ 0	$ 0
FY 1977	2,998,650	0	0
FY 1978	2,998,650	880,000	0
FY 1979	2,998,650	950,000	1,000,000*
FY 1980	1,266,372	775,000	0
FY 1981	775,000	775,000	30,000**

Throughout the period of implementation of the Plan of Compliance, the universities have been under a specific Board directive to implement the Plan to the best of their respective abilities with the resources available.

* NCATE accreditation for Alcorn and Mississippi Valley.

** UM Law Center compliance (*Robinson* v. *Williams* consent decree).

BOARD'S EXHIBIT 001

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8355 EASTOVER DRIVE
P.O. BOX 2336
JACKSON, MISSISSIPPI 39205
(601) 982-6611

November 27, 1973

Mr. Peter Holmes, Director
Office for Civil Rights
Department of Health, Education, and Welfare
Washington, D. C. 20201

Dear Mr. Holmes:

On November 14, 1973, I received your letter of November 10, 1973, advising me that the Mississippi state system of higher education is not currently in compliance with Title VI of the Civil Rights Act of 1964. With deference, it is the position of the Board of Trustees of State Institutions of Higher Learning (hereafter identified as the Board) that the Mississippi system of higher education is in compliance with Title VI of the Civil Rights Act of 1964. However, we will submit amendments to our "Plan of Compliance," heretofore submitted on June 7, 1973.

This letter is an acknowledgment by the Board of contentions of your office that further affirmative action be taken by the Board and the various institutions under its

governance to eliminate the claimed vestiges of the prior existing dual system of higher education in the State of Mississippi.

Through previous statements and actions, the Board has committed itself to comply with Title VI of the Civil Rights Act of 1964. To reassure you in this matter, we plan the following procedure and timetable to further revise our "Plan of Compliance":

1. A representative planning committee has been appointed and charged with the responsibility to begin immediately to revise our "Plan of Compliance" into a plan acceptable to Director of the Office for Civil Rights. The membership list is attached.
2. The planning committee, through its Chairman, will make regularly reports to the Office for Civil Rights between now and February 12, 1974, the due date of our revised "Plan of Compliance", and will make plans for meeting with Director of Office for Civil Rights as early as possible after further efforts have been made to do that requested in the November 10, 1973, letter, and with belief that the end result will be an acceptable plan to all concerned.
3. The mission of the planning committee will include the following specific charges:
   a. Devise an acceptable compliance plan for all the institutions concurring in the June 7, 1973, submission of the "Plan of Compliance" of the Board.
   b. The Plan will show the anticipated results from each action contained in the Plan, particularly with regard to faculty employment and student enrollment.

c. Those persons responsible for the implementation of the Plan will be individually identified.

d. Projected costs and necessary appropriations from the Mississippi Legislature will be outlined.

e. A procedure will be established which will provide for semi-annual reports.

The chairman of the planning committee will communicate with you regularly so that you will be kept informed of developments.

Sincerely yours,

/s/ Thomas N. Turner

THOMAS N. TURNER
President

TNT:pa
Attachment

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Vice President, Board of Trustees of
State Institutions of Higher Learning

Legal Counsel — Dr. M. M. Roberts
Attorney at Law
Hattiesburg, Mississippi

Honorable A. F. Summer
Attorney General
State of Mississippi

---

* Members of the Committee who are of the Negro race.

BOARD'S EXHIBIT 020

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

1855 Eastover Drive
P.O. Box 2336
JACKSON, MISSISSIPPI 39205
(601) 982-6611

Office of the
Executive Secretary and Director

February 6, 1975

TO EXECUTIVE HEADS OF
STATE INSTITUTIONS OF
HIGHER LEARNING

Gentlemen:

The Board of Trustees of State Institutions of Higher Learning in regular meeting on September 19, 1974, instructed all institutions to implement the Plan of Compliance to the best of their abilities with the resources available.

In recent weeks there have been expressions of concern as to the interpretation of the commitments included in the Plan. Upon advice and counsel with Dr. Roberts and Mr. Noble and with the approval of the Board officers, we are identifying specifically some of the commitments made in the Plan of Compliance which relate to the questions put forth to this office. These commitments are as follows:

A. Official representatives of institutions are not to become directly involved with employers, schools, realtors, athletic officials, medical care providers, and all others who do not have a non-discriminatory policy regarding race, sex, religion and national origin. The following activities are contrary

to the Plan of Compliance adopted by the Board of Trustees of State Institutions of Higher Learning:

1. Recruiting of students is prohibited at schools that have not filed with the Board of Trustees of State Institutions of Higher Learning a non-discriminatory policy as to recruitment on their respective campuses.
2. Student teaching and other practicum assignments are to be made only with those schools and agencies that have a non-discriminatory policy.
3. Institutions should give close scrutiny to requests for the use of campus facilities by groups or individuals that maintain a policy of discrimination. In doing so, a review should be made as to whether or not that use will be on an exclusive or non-exclusive basis. Exclusive use is prohibited. Exclusive use is defined as the granting of permission to use campus facilities to the exclusion of other individuals or groups by one who has a discriminatory policy.
4. Official participation of university personnel in discriminatory conventions and meetings is contrary to the Plan of Compliance.
5. Direct and official assistance by the university to students and graduates in employment placement with employers not committed to non-discrimination is prohibited by the Plan of Compliance.

B. The Plan of Compliance identifies commitments pertaining to employment and promotions of uni-

versity personnel. These commitments are identified on pages 12-17 in the Plan. Pay careful attention to these commitments.

Should you have specific questions as to the intent of the Plan of Compliance, do not hesitate to call them to the attention of this office.

Sincerely yours,

/s/ E. E. Thrash

E. E. THRASH
Executive Secretary and Director

EET:pa

cc: Dr. M. M. Roberts
Mr. Ed Noble, Jr.
Members of the Board of Trustees of
State Institutions of Higher Learning

BOARD'S EXHIBIT 105

UNIVERSITY OF MISSISSIPPI
TWELFTH REPORT
TO THE
PLAN OF COMPLIANCE
TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
APPROVED BY THE
BOARD OF TRUSTEES OF STATE INSTITUTIONS
OF HIGHER LEARNING
1985-1986

UNIVERSITY OF MISSISSIPPI
UNIVERSITY, MISSISSIPPI
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INTRODUCTION

This document contains the twelfth annual report of the University of Mississippi's degree of implementation of its portion of the State of Mississippi Plan of Compliance to Title VI of the Civil Rights Act of 1964. The Plan of Compliance is designed to improve educational opportunities for all citizens of the State of Mississippi with particular emphasis on equal access and retention of members of minority races. This twelfth report describes the efforts by the University of Mississippi during the 1985-1986 fiscal year to implement its responsibilities under the Plan of Compliance.

REPORTS ON "OTHER RACE" STUDENT RECRUITMENT, ADMISSION, RETENTION AND GRADUATION, 1985-86

Enrollment

Total Fall enrollment increased from 8,715 to 9,004. There was a slight decline in black student enrollment from 554 to 547, with the percentage of black students enrolled slipping from 6.4 percent to 6.09 percent. New freshmen black enrollment was up 45.8 or 27 students, however. Enrollment statistics for the 1985-86 school year are presented in Table I. The percentage of black students enrolled ranged from 6.88 to 9.79 over the four enrollment periods with a weighted average of 6.91 percent for the entire year.

Table II depicts dismissal by race for all enrollment periods. The percentages of black students appearing on the dismissal list at the end of a semester are usually slightly higher than for University students in general. The Committee on Admissions, as a matter of routine procedure, reviews dismissals and considers such factors as the lack of educational opportunity when readmitting students on probation. First-time petitioners are normally

TABLE I

ENROLLMENT BY RACE, FIRST TERM 1985, THROUGH SPRING SEMESTER 1986
UNIVERSITY OF MISSISSIPPI, OXFORD CAMPUS•

RACE	1st Summer Term 1985		2nd Summer Term 1985		Fall Semester 1985		Spring Semester 1986	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
American Indian	4	.13	4	.18	11	.12	8	.10
Black	292	9.70	207	9.79	547	6.08	514	6.09
Asian/Pacific Islander	19	.63	18	.85	45	.50	43	.51
Hispanic *	10	.33	5	.24	20	.22	18	.21
White/Non-Hispanic	2460	81.67	1709	80.85	7950	88.29	7400	87.74
Others*	227	7.54	171	8.09	431	4.79	451	5.35
TOTALS	3012	100.00	2114	100.00	9004	100.00	8434	100.00

* Includes Non-Citizens and those who chose not to reveal race.

TABLE II

DISMISSAL BY RACE, 1985-86 ACADEMIC YEAR
UNIVERSITY OF MISSISSIPPI, OXFORD CAMPUS•

RACE	Combined 1985 Summer Session		1st Semester 1985-86		2nd Semester 1985-86		Total Total	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
American Indian	0	0	0	0	1	.17	1	.08
Black	35	22.58	70	12.85	64	10.74	169	13.04
Asian/Pacific Islander	3	1.94	6	1.10	7	1.17	16	1.23
Hispanic	0	0	1	.18	2	.34	3	.23
White/Non-Hispanic	117	75.48	468	85.87	522	87.58	1107	85.42
TOTALS	155	100.00	545	100.00	596	100.00	1296	100.00

readmitted and given a second chance. The readmission policy gives students whose educational preparation is not particularly strong an opportunity to continue their education.

Recruitment

A "total marketing" concept is utilized in recruiting students at the University of Mississippi, with all segments of the University's market being recruited in basically the same fashion. However, special programs are attempted which have been designed to appeal to "other race" students.

The basic procedures used by recruiting teams in official visits to junior colleges, public secondary institutions, and those private schools that have signed an agreement with the Board of Trustees of State Institutions of Higher Learning permitting visits by multi-racial teams for the purpose of recruiting are threefold. Early in the Fall a courtesy visit is made by a regional recruiter to the school counselor and/or admissions office. At that time, the University recruiter sets an official date to return to talk to students. The second visit is made, meeting with students and providing admissions, financial aid, housing, and other information about the University. In the Spring, a follow-up visit is made to each school to answer questions for students who have applied for admission and to recruit students who are still undecided about college choice. (See Appendix A for a list of schools visited to recruit students.)

The efforts for minority recruitment within the basic framework are many and diverse. One full-time admissions counselor and one half-time position are specifically designated for minority recruitment. The function of these positions is to cover schools statewide as well as to develop

alumni assistance for recruiting. In addition to divert responsibility for recruiting "other race" students, the minority admissions counselors are assigned special projects and are the resource persons for attracting "other race" candidates for admission.

Special efforts are utilized in the recruitment of minority students. There is a minority brochure with mailback card which is distributed to all minority contacts. When the mailback card is received, there is immediate follow-up. (A copy of the brochure is Appendix B.)

During the month of February, a Leadership Conference is held to coincide with Black History Month. Approximately 125 minority students are invited to attend classes, participate in seminars, and be introduced to campus life. (A copy of the brochure is Appendix C.)

Special attention is given to correspondence. Birthday letters, Christmas cards, and graduation cards are sent in addition to regular mailings from the Pre-Admissions Office.

The Law School operates a comprehensive minority student recruiting program under the supervision of Assistant to the Dean, Mr. Johnny Parker. Student/faculty teams visit each undergraduate campus in Mississippi during the Fall Semester. Minority pre-law students are identified and interviewed. Their names are added to the Law School recruitment mailing list to receive all recruiting information.

Early in the Fall Semester, a Minority Recruitment Conference is held at the Law School. Minority pre-law students and pre-law advisors from Mississippi colleges are invited. Approximately 100 minority pre-law students attend these two-day programs each year and are provided intensive counseling in admissions procedures, test taking, and study routines. They also receive information about financial aid and how to submit applications.

One special program for minorities addresses the problem of increasing minority representation in the health professions. The University of Mississippi has been successful in launching a program designed to identify promising students from minority and economically disadvantaged backgrounds and acquaint them with the opportunities for health related careers. The program includes special counseling, academic assistance, and stipends for an eight-week program operated during the summer. Special tours and seminars are a part of the program. The program is designed to provide supportive services to insure that these students have an optimal chance for succeeding in courses of study leading to health professions. (A copy of the brochure is Appendix D.)

Admissions

During 1985-86, the University required, as stipulated by the Board of Trustees of State Institutions of Higher Learning, an American College Test (ACT) Composite Score of 15 for admission at the freshman level. The Scholastic Aptitude Test (SAT) of the College Entrance Board could be substituted for nonresident applicants. In addition, the University required a minimum of 15 high school units, with at least three units of high school English, two units of math, and two units of social studies. To accommodate talented or "high risk" students, the Board of Trustees allowed a number equal to 5 percent of the previous year's freshman class to be admitted to the University on probation with ACT composite scores of 9 to 14. The University normally admits approximately 100 such students and provides special counseling and follow-up to assist them in achieving college success. These students receive tutoring, counseling, and other special help. They are expected to carry a full course load (twelve

semester hours during a regular semester) and to maintain a minimum grade-point average of 2.00 (C) during the first semester. Probationary conditions are then suspended, but future progress continues to be monitored and further assistance provided. Admissions standards have been raised for the 1986-87 school year, but we will retain the "exception" for talented or high risk students described above.

Graduation

Tables III, IV, and V indicate graduation by race. It is evident from these tables that black students have a positive persistence rate and graduate in numbers that reflect overall enrollment percentages. It should be noted that these data are organized by race and sex in order to depict comparison with other students graduating during the same period.

TABLE III
UNIVERSITY OF MISSISSIPPI
GRADUATION BY RACE, 1985-86
BACHELOR DEGREES
(All Degrees Conferred Between July, 1985, and June 30, 1986)

Race	Men	Women	Total	Percentage of Total
(1)	(2)	(3)	(4)	(5)
Nonresident Alien	13	5	18	.126
Black	30	41	71	4.97
American Indian	1	0	1	.07
Hispanic	3	2	5	.35
White/Non-Hispanic ...	685	639	1324	95.58
Asian/Pacific Islander ..	8	3	11	.77
TOTALS ALL GRADUATES	740	690	1430	100.00

TABLE IV
UNIVERSITY OF MISSISSIPPI
GRADUATION BY RACE, 1985-86
MASTERS/DOCTORAL DEGREES
(All Degrees Conferred Between July, 1985, and June 30, 1986)

Race	Men	Women	Total	Percentage of Total
(1)	(2)	(3)	(4)	(5)
Nonresident Alien	38	8	46	12.27
Black	11	15	26	6.93
American Indian	0	0	0	0
Hispanic	1	2	3	.80
White/Non-Hispanic ...	140	152	292	17.87
Asian/Pacific Islander ..	4	4	8	2.13
TOTALS ALL GRADUATES	194	181	375	100.00

TABLE V
UNIVERSITY OF MISSISSIPPI
GRADUATION BY RACE, 1985-86
BACHELOR DEGREES
(All Degrees Conferred Between July, 1985, and June 30, 1986)

Race	Men	Women	Total	Percentage of Total
(1)	(2)	(3)	(4)	(5)
Nonresident Alien	0	0	0	0
Black	4	2	6	4.17
American Indian	0	0	0	0
Asian/Pacific Islander ..	0	0	0	0
Hispanic	0	0	0	0
White/Non-Hispanic ...	103	35	138	95.83
TOTALS ALL GRADUATES	107	37	144	100.00

The Student Counseling Center. The Student Counseling Center, a part of the Student Development Center, provides evaluations of and assistance to all students and makes a special effort to assist minority students. The Student Counseling Center offers its services to all students without regard to race, color, creed or national origin to aid them in their transition from high school or another college to the University of Mississippi.

During the summer prior to enrollment many new students attend one of six weekly Counseling/Pre-Registration Conferences. During this conference, minority campus leaders are represented in student-led groups whose purpose is to involve new minority students in extracurricular activities. Students are given the opportunity to learn about several of the special programs offered by the University such as the Student Counseling Center, the Learning Development Center, and the Financial Aid Office. An individual counseling session of approximately 30 minutes gives each student a one-to-one relationship with a counselor.

If a student does not attend one of the summer conferences, he or she is provided an opportunity to participate in Fall Orientation. This program is open to all students, but some minority students are used as small-group leaders with the expressed mission of seeking out other minority students to assist.

The Counseling Center offers a testing program which includes aptitude, ability, interests, reading, and personality tests to identify those areas where assistance is needed. Difficulties may also be discovered or anticipated through a student's self-respect or self-assessment, ACT scores, and academic background (as demonstrated by

high school or college transcripts). In the same manner, a student's strengths and talents may also be identified.

Academic counseling and referral are also available. A student may be asked to see a counselor at the Student Counseling Center weekly to report on progress and to have notes, homework, and returned tests evaluated. These professionals are readily available to discuss the special needs of minority students and to consult with staff members of the Student Counseling Center. When serious difficulties exist, Counseling Center personnel work with the student's teacher(s) and dean to secure the most advantageous scheduling, special assistance, awareness of special problems, special schedules, etc.

All students admitted on probation are assigned to staff members of the Student Counseling Center for academic advising. Several students in this high-risk group are minority students and are given special assistance.

A course designed to assist the beginning student is Effective Study 101, a study skills course, taught through the School of Education. The course is open during the Fall term to students scoring below 20 on the ACT. The classes are small, and each student meets with his or her instructor on an individual basis at various intervals during the term in addition to the regularly scheduled class. The class emphasizes such skills as note-taking, test-taking, and time management.

The Counseling Center employs a minority professional as Associate Director of Student Development. The responsibilities of this professional include counseling and academic advising. The MENTOR Program is designed to foster positive interaction among faculty members and minority students. The PEER Counseling Program is designed to foster interaction among freshmen and upperclassmen while focusing on adjustment and retention of students. Both programs are jointly coordinated by the

Director of Student Development and the Associate Director of Student Development.

The Department of Career Services and Placement, which is a division of the Student Development Center, provides career and job placement assistance to minority students. Students receive assistance in resume preparation and interview techniques as well as assistance in locating job contacts and taking part in the University's on-campus recruiting program.

A special effort is made to hire minority professionals in the Department of Student Development. These role models provide security for minority students and communicate to them that the Department is accessible and interested in them.

The Learning Development Center (LDC). The LDC was organized to help students who have difficulty with the basic skills. Although not officially described as being intended for minority students, the Center has nevertheless been structured to give aid in those areas of academic deficiency most common among the socially and culturally deprived who, in Mississippi, are often minority-race students. Periodic sampling indicates approximately one-half of the LDC clients are black students.

In order to assure that a larger percentage of students who are admitted to the University with less than adequate preparation have a better chance of completing their degree programs, extensive academic assistance is provided students through the LDC.

The Center, housed in the general library for easy access to media devices and other learning materials, has a black director, a black counselor, and a black secretary. Largely on a one-to-one basis, advanced graduate students of both races assist students who are referred to the Center for help or who voluntarily seek its services. (See LDC Brochure, Appendix E.)

In recent years students not meeting the ACT composite score requirement of 15 who enter under the 5 percent rule have been designated as a special "Target Group." Although any University of Mississippi student may be served in the Learning Development Center, the Target Group of approximately 100 students receives first preference.

Development courses in English and math are not required for all entering freshman students who score below 12 on the ACT English and/or math sections. These courses, English 100 and Math 100, were offered by the Departments of English and Mathematics in the College of Liberal Arts for the first time during the Fall Semester, 1980; Reading 100 was added in the Fall of 1981. The Learning Development Center provides complementary services for these new development courses. The LDC served approximately 192 minority or Black students during the 1985-86 school year.

The Law School Tutorial Assistance Program. This Program provides the vehicle for both student counseling and academic assistance. The Assistant to the Dean, Mr. Johnny Parker, has personal contact with every minority applicant in the recruitment process. He therefore has a personal relationship when the recruits become students in the law school. He serves ex officio on the Admission Committee and has access to information in each student's admission file. Using this information and his personal contact, Mr. Parker effectively counsels each student regarding financial, academic, or personal matters. First year students are offered tutorial assistance to help them adjust to law studies. Upperclass minority students serve as tutors and counselors and are compensated by the law school. The tutors not only provide academic assistance but also counsel students on study methods, writing skills, exam writing techniques, and personal matters. Informa-

tion describing this program is sent to all minority applicants and provided to incoming students.

REPORTS ON NONDISCRIMINATORY PRACTICES

Student Teaching and Other Practicum Assignments

The University offers a wide variety of practicum assignments. These assignments are conducted though selected public schools and state agencies. In the Teacher Education program students participate in two types of field experiences – pre-teaching and internship/student teaching. The Director of Field and Laboratory Experiences is responsible for coordinating the field experience assignments and annually forwards to the appropriate University official a written statement of nondiscrimination for the cooperating agencies.

During the 1985-1986 academic year in the pre-teaching experiences there were 8 black teacher aide/observers out of a total of 141 University students and 22 black and 2 "other" classroom supervisors out of a total of 105 teachers. Also, there were 3 black and one other race intern/student teacher out of a total of 160 University students and 18 black cooperating teachers out of a total of 139. Black teachers supervise both white and minority race students in both types of experiences.

1985-86 FIELD EXPERIENCES

PRE-TEACHING EXPERIENCES

	Total	*Black*	*Other*
Teacher aides/Observers ..	141	8	0
Classroom supervisors	105	22	2
TOTAL	246	30	2

INTERNSHIP/STUDENT TEACHING EXPERIENCES

	Total	*Black*	*Other*
Interns/Student teachers ..	160	3	1
Cooperating teachers	139	18	0
TOTAL	299	21	1

Intramural and Intercollegiate Athletics

The Intramural-Recreation Services, a component of the Division of Student Affairs, continues to provide services for the University Community without regard to race, color, creed, sex, or national origin. Teams participating in intramurals may be composed of all-whites, all-blacks, a mixture of the two, and various combinations of international students. There are programs for all-male teams, all-female teams, and teams composed of both males and females. The same situation exists in the individual and dual competition.

Continuing efforts are made in all phases of the athletic program to insure that the University adheres to the affirmative action Plan of Compliance.

Any time there is an opening in the department, affirmative action guidelines are followed. Employment decisions are made based on qualifications necessary for the job regardless of race, color, creed, or national origin. The following black professionals are employed by the Department of Intercollegiate Athletics:

Peggie Gillom, Assistant Women's Basketball Coach
James T. Thomas, Assistant Football Coach
Wendell Hudson, Assistant Basketball Coach
Joe Proctor, Assistant Basketball Coach
Dr. Kenneth D. Gibson, Head Track Coach

The Ole Miss Department of Intercollegiate Athletics maintains a recruiting program which has continuity in all

phases of the program and which is aimed at signing the best student-athletes available. The following is a breakdown of the black student-athletes who signed with the University of Mississippi for 1985-86. These figures in no way reflect the number of scholarships that were actually offered to black student-athletes.

	Men's Football	*Men's Basketball*	*Women's Track*	*Baseball*	*Women's Volleyball*	*Track*
1985-86	9	3	4	5	0	4

Student Financial Assistance

The student financial assistance program is administered without regard to race, color, creed, sex, or national origin. The University makes no attempt to determine race in advance of awards; afterwards, for purposes of reporting, breakdowns are made to indicate the amount of money awarded to all minority students.

During the current academic year, which may be taken as typical, University-administered financial aid to students totaled approximately $12,540,823. That total includes federal and non-federal fund, but excludes certain scholarships which are administered by bodies external to the University. Of the total, $2,088,153 was awarded to black students. Thus black students, who comprised approximately 6.07 percent of the student body, received 16.65 percent of all University administered or University controlled funds available for financial assistance. The following breakdown gives additional details:

Program	*Approximate Funds Available*	*Percent Awarded to Black Students*
PELL Grants	$2,369,334	23% ($542,438)
National Direct Student Loan	981,865	18% (176,722)
Supplementary Opportunity Grants	65,979	29% ($ 19,229)
College Work Study	438,922	36%($159,025)
Guaranteed Student Loans	4,037,584	14% ($566,56)
"University Scholarships	4,011,216	14% ($553,232)
Other Loans	635,926	11% ($ 70,941)

It should be noted that, of the above funds, the National Direct Student Loan and the Guaranteed Student Loan awards require repayment; other awards do not.

The University hopes to receive increased federal funds for financial aid and is actively pursuing additional funds for scholarships through alumni giving, the University Foundation, the Major Gifts Campaign, and other programs. Black students will continue to participate in any additional financial aid which can be obtained.

Student Employment and Student Placement for Employment After Graduation

Part-time student employment at the University of Mississippi is of three types: College Work-Study, a program of the Student Financial Aid Office; Job Location and Development Office, a program of the Career Services and Placement Office; and employment through the University Personnel Office Division of Student Employment. The first type of employment is based upon the establishment of financial needs; the latter two match students with particular talents to the needs of University units or to openings in Oxford which have been listed with the respective offices.

A review of student employment through June, 1986, at the University reveals that of 2,556 students employed during the 1985-86 school year, 2,053 were white, 365 were black, 121 were Asian or Pacific Islanders, and 17 were Hispanic.

The University of Mississippi Career Services and Placement Office has the responsibility to provide students with opportunities to engage in meaningful activities related to: (1) career orientation, (2) career exploration, (3) career assessment, (4) career development, and (5) career placement.

The University has a responsibility to help students understand how the educational process can be utilized and transferred to the types of activities they might undertake for the rest of their lives. The role of career planning and placement is that of a bridge between the student, the academic process, and the world of work.

A basic assumption underlying the functions of the Office of Career Services and Placement is that the choice of a career is a vital part of the individual's total development as a person. Career orientation, development, and decisions are related to a significant part of every student's academic experience. Satisfactory career placement is the ultimate goal of services provided in a development career planning program.

The complexities of the decisions require that the University of Mississippi assume some responsibility for assisting students in coping with these vital concerns. If they are to make sound educational and career choices, students must be contacted early in the educational process and provided with as much information as possible about the academic requirements relevant to their aspirations for the world of work.

Career planning and placement professionals serve as a link between the campus and the outside world. They

market students to employers and at the same time market the institutions. They also should be concerned with marketing the outside world back into the academic process.

The Career Services and Placement Office is in a unique position to coordinate, collect, and disseminate information relative to this vital concern. The staff of this office has the established contacts with potential employers, as well as the opportunity for access to the faulty, student services staff, and students in need of this service and information.

Student Health Care

The Student Health Service of the University of Mississippi provides general medical care, both outpatient and inpatient, to eligible students regardless of race, sex, creed, or national origin. All areas of general practice are provided including gynecological services.

Hospital patients are assigned rooms by sex, but no discrimination is made as to race, color, creed, or national origin.

The Student Health Service does not discriminate in the hiring of employees. Wages are paid as set forth by the University Personnel Office.

Extracurricular Activities

The University's efforts in ensuring involvement of black students in all extracurricular activities are coordinated by the Vice Chancellor for Student Affairs.

The general mission of the Division of Student Affairs is holistic in scope and is structured to provide the best possible educational and human development experience outside the classroom for the students of the University of Mississippi. The scope of the responsibilities relative to this coordination are manifold and broad. Responsibilities

are designed to meet several objectives: (1) to attract superior minority students, (2) to provide intercultural programs and activities, (3) to keep minority students aware of and involved in available University programs and services, (4) to improve the social life of minority students, (5) to provide orientation programs for minority students, (6) to provide cultural enrichment programs for minority students, and (7) to counsel with individual students and student organizations.

The Division of Student Affairs conducts workshops and orientation sessions designed to keep minority students abreast of University policy regarding their total non-academic experience. They include such significant areas as financial aid, academic advising, career orientation, development and assessment, placement registration, and qualifications for membership in honoraries. This year a special conference, "Black Students on White Campuses," provided considerable assistance to new minority students in adapting to their new academic environment. Resource personnel in various areas were utilized to assist with the presentations and programs. An enhancement of communication with our minority students resulted.

The Vice Chancellor for Student Affairs serves as chair of the Chancellor's Advisory Committee on Black Student Concerns. The Committee, in addition to serving as a sounding board for minority student concerns, continues to monitor the progress of the University's affirmative action procedures regarding employment of minority staff and faculty and the allocation of financial aid for minority students. Dialogue and open communication are encouraged.

Minority students are well represented in the Associated Student Body, the Association for Women Students, the University of Mississippi Student Programming Board,

and the Residence Hall Association. Black Greek organizations have been merged with the Panhellenic and Interfraternity Council. Continued emphasis is being placed on improving rush policies, pledge programs, and academic achievement. Minority students have input into selection and implementation of programs in each of the areas previously mentioned.

The Division of Student Affairs continues to identify and secure the help of former black graduates in improving participating of black students in the various programs and activities of the University. Black alumni are being utilized to:

1. Increase understanding and improve involvement of blacks in campus activities.
2. Set up a cooperative program so that students can benefit from their professional know-how and contacts.
3. Maintain a direct relationship with the current Black Student Union.
4. Counsel and advise students and serve as role models.
5. Promote and inspire academic achievement.
6. Serve as a recruiting tool for the University.
7. Serve as resource persons for career alumni networks.
8. Serve as a source of revenue and support for the Campaign for Ole Miss.

The University is committed to attracting and retaining superior minority students and has continued to expand and improve existing programs designed to enhance student life for the minority student. Special efforts, in cooperation with the alumni office, are initiated annually to enhance minority recruitment and support efforts. The University of Mississippi is fortunate in that positive

dialogue is exchanged among our administration, faculty, staff, and students. A concerted effort is made at all levels to develop among minority students a sense of awareness and pride.

The underlying philosophy that permeates the overall mission of the Division of Student Affairs at Ole Miss is that each student has "uniqueness" and individual "worth and dignity." Communication is the key to developing a caring attitude. The Division of Student Affairs realizes that if students can adapt and "fit" into the social and academic mainstream of the University, their chances of a successful college career are substantially increased.

PERSONNEL EMPLOYMENT, TRAINING, AND PROMOTION

"Other Race" Employment in Managerial, Professional, and Technical Positions

The table below shows the employment of minority and black personnel by designated categories as reported in February 1985.

Minority Employment

	Total Minorities	Black
Managerial	5	5
Professional	22	22
Faculty	22	11
Technical	5	5
TOTALS	54	43

Special Efforts to Employ, Train, and Promote "Other Race" Persons

Minority faculty and staff who move into the area continue to receive priority in housing assignments. This policy has proven to be a valuable asset in the recruitment of minority faculty in particular.

Revisions in the University's Affirmative Action Program are made annually. (See Appendix F.)

In July 1986 the Office of Affirmative Action provided an equal employment/affirmative action orientation program for administrative and supervising personnel. The program is designed to:

1. Provide those persons who make employment decisions and those in charge of supervision and evaluation of employees with relevant information regarding their equal employment opportunity responsibilities.
2. Reinforce policies and procedures outlined in the University's Affirmative Action Plan.
3. Assist in improving the lines of communication between administrators, supervisors, and the general work force.
4. Assist in creating a more positive atmosphere where harmonious working relationships exist among all members of the work force. (See Appendix G.)

The Minority Faculty Recruitment Committee funded a number of programs during 1985-86 aimed at recruiting and retaining "other race" faculty.

1. *Dissertation Awards*: The Committee funded over $17,000 in dissertation awards to untenured minority faculty in the process of completing their dissertations. Faculty in six departments received summer dissertation research awards (Art, Economics, Journalism, Mechanical Engineering, Political Science, Social Work). Three of the award receipients received their doctorates and assumed tenure track positions within the University.
2. *Research Awards*: The Committee funded over $17,000 in minority faculty research awards to untenured faculty in regular tenure track positions,

allowing them to pursue summer research projects. Five awards were granted (one each in Art, English, Political Science, and two in Sociology).

3. *Supplemental Funding*: The Committee provided $2,000 supplemental funding to the Department of Economics to assist in recruiting a minority faculty member.
4. *Distinguished Black Lectureships*: The Committee conducted a University-wide search for black academicians with distinguished records of teaching and scholarly/creative activity. Over $47,000 was expended in the search and for salaries and fringe benefits. Two full-time Distinguished Black Lecturers were appointed in the Departments of Journalism and Art for the Spring Semester. In addition, the Committee funded one full-time summer position in the Department of Curriculum and Instruction for a faculty member from an historically black institution within Mississippi.
5. *Black Scholars*: Over $20,000 was funded for Visiting Black Scholars at the University of Mississippi. Seven thousand dollars were dispersed for individual scholars spending from 3-5 days within a sponsoring department. Five Departments sponsored such visits (Art, Medicinal Chemistry, Modern Languages, Music, Theatre Arts). Over $13,000 was expended by the Committee for conferences which brought numerous distinguished black scholars to campus. Funded activities included the Richard Wright Symposium, the Conference on Black Mississippians, and the Symposium on Mutli-Cultural Education.

Recruitment of Graduate Assistants

In processing applications for admission to the Graduate School, academic departments and the Graduate School Office attempt to identify minority race applicants in order that special attention might be given to those with regard to financial assistance in the form of Graduate Assistantships and University Non-Service Fellowships.

Graduate School faculty representatives regularly visit traditionally black schools in the region and attend special graduate and professional school career days in an attempt to provide information on University of Mississippi graduate degree programs and opportunities for financial assistance at this institution. In addition, on visits to all regional institutions, Graduate School faculty representatives attempt to identify prospective black graduate students.

The Graduate School subscribes to the GRE Minority Locater Service. In addition to making available to the various departments the profiles of all minority students who have expressed interest in graduate study in the disciplines offered at the University of Mississippi, the Graduate School corresponds directly with students identified by this service. Departments follow up with contacts to those prospective students whose qualifications suggest eligibility for admission under departmental academic recruitments.

For the academic year 1985-86, eighteen (18) Non-Service Fellowships were awarded by the Graduate School to black students. An additional seven (7) fellowships were awarded during the 1985 Summer Session.

Faculty Exchange

There is no faculty exchange arrange between "other race" institutions and the University of Mississippi.

Assistance in Upgrading Credentials

With regard to efforts to assist minority employees to upgrade their credentials, such personnel are urged to take advantage of a staff benefit whereby employees may take two courses, with up to seven hours of credit, each semester at University expense. During the past year 20 minority employees have taken advantage of this opportunity, enrolling in a total of 49 courses over two semesters.

In addition, minority employees are assisted in upgrading their credentials through on-the-job training programs. Ten such programs were active this year involving 14 minority employees. The programs involve release time to improve reading skills with the Oxford Literary Program, training in the use of state-of-the-art word processors and microcomputers, opportunities to attend conferences, and cross-training for other jobs. As a result of this training, 3 minority employees were promoted to higher level jobs and one was able to obtain a much better position outside the University. One professional minority employee has been given a leave of absence next year to complete his LL.M. degree.

One of the Air Force ROTC minority staff members, TSSG Taylor is planning to get a commission through AFROTC. The department has given him time to take classes so he may enroll in the two-year program this January.

To aid Assistant Professor Maryemma Graham in increasing her publications and therefore her chances for tenure, and eventually promotion, the University gave her a full-time graduate assistant for 1985-86 and has assigned her a half-time assistant for the coming year.

Ms. Angela McLain is an incumbent minority faculty member in the Department of Economics and Finance. To

assist her in completing her requirements for a Ph.D. in Finance, she has been given, for the first two years of employment at the University, a six-semester-hour teaching load with two preparations; summer research grants for two summers; no committee assignments; access to computer and library facilities; and a graduate assistant.

The efforts reported last year to assist Mr. Johnny Parker in entering an LL.M. program were successful. He will enter that program at Columbia University in the Fall of 1986. Mr. Parker will continue as Assistant to the Dean. He will be on leave during the school year but will work in recruitment and minority programs the remainder of the year.

Two black secretaries in the Department of Chemistry have been trained in the use of microcomputers for office work and data management.

Dr. Gemma Beckley in the Department of Social Work was allowed to take leave for two academic years to take the required course work for her doctoral degree in Social Work at Columbia University. She was also allowed another leave for a semester while she was gathering the data for her dissertation. Dr. Beckley was awarded special funding by the University for two summers to help her complete the dissertation and receive the doctoral degree.

During the last three years the University has provided Ed Welch with $6,000, $6,000, and $3,500 for completion of his Ph.D.

A special training effort to assist an incumbent minority person in the School of Pharmacy, Mr. Harvey Lynch, was undertaken over a period of time by Dr. Henry B. Pace, his supervisor. Mr. Lynch was hired in the Research Institute of Pharmaceutical Sciences as an Animal Caretaker, but after on-the-job training, Mr. Lynch was promoted to Animal Handler.

Acting Assistant Professor Betty Crouther received a Minority Faculty Recruitment Committee (MFRC) Dissertation Research Award during July/August of 1985 to assist her in completing a dissertation for the Ph.D. in Art History at the University of Missouri. Dr. Crouther received the degree in December. Effective January 1, 1986, with a supportive recommendation from the University of Mississippi Art Department, Dr. Crouther received the J. Paul Getty Postdoctoral Fellowship at Stanford University for 1986-87. The Minority Faculty Recruitment Committee has provided Dr. Crouther with a Research Award for the Summer of 1986 to assist her with the preparation of her publications.

Distinguished Professorships

Dr. Edith Smith, a Black female professor from Alcorn State University, served as a visiting professor the first Summer Session, 1986. She served as the instructor for EDUC 333/555, "Selected Topics in Education: Multicultural Studies-Ethnic Studies in a Variety of Cultures."

During the past year the Department of Medicinal Chemistry invited one of the world's leading organic chemists to visit the department for one week. Dr. Bart Fraser-Reid, James B. Duke Professor of Chemistry at Duke University, visited the department March 2-7, 1986, to present a major research seminar and to present lectures on asymmetric organic synthesis to Dr. Sinclair's class on Special Topics (MEDC 610). All minority institutions in a four-state region were sent invitations to attend this seminar. Dr. Reid's visit will have a long-range impact on research in the Department.

The Chancellor's Symposium on Southern History dealt with the Civil Rights Movement. Three of the featured speakers were Black. They were David Levering Lewis of

Howard University (now of Rutgers University), Clayborne Carson of Stanford University, and Charles V. Hamilton of Columbia University.

Distinguished professor of violin, Sylvia Gholson from the University of Cincinnati, was brought to the Ole Miss campus this past spring semester for a one-week residency. Mrs. Gholson taught string pedagogy and applied string lessons to our music majors and also taught in the Ole Miss String Project, instructing in the Suzuki violin method. She performed a solo recital and also coached the University Orchestra. The week's residency was very successful.

Ms. Doris Saunders, Professor and Coordinator of Print Journalism, Jackson State University, taught in the Department of Journalism during the spring semester of 1985-86.

Dr. Althea Bulls Williams was Distinguished Black Lecturer for Spring 1986 in the Department of Art. Dr. Williams, previously on the faculties of Tuskegee, Delaware, and Oregon, and former Director of Education at the Oakland Museum in California, conducted seminars for senior and graduate students and taught a course on Museum Education. In addition, Dr. Williams assisted with the docent program at the University Museums and gave several public lecturers and seminars for other groups on campus, in the community, and at the Jackson and Laurel Museums.

Visiting artists in the Department of Arts were Yvonne and Curtis Tucker who conducted a ceramic workshop with public lecturers June 23-27. Funded by the Minority Faculty Recruitment Committee, Professor Yvonne Tucker, Associate Professor at Florida A & M University in Tallahassee, and Curtis Tucker, independent artist and member of the Tallahassee Arts Council, met with repre--

sentatives of the Yoknapatawpha Arts Council and the Department of Afro-American Studies as well as with University students and interested community participants.

A one-man exhibition in the Fine Arts Center gallery was held by Professor Cook of Jackson State, whose exhibit and reception coincided with Black History Week.

This year the Department of Modern Languages was very fortunate in having Professor Barbara C. Dease of the Department of Modern Languages and English at Jackson State University as a Visiting Black Lecturer for several days this spring. Professor Dease gave one formal lecture, one less formal lecture as part of a Brown Bag presentation on Afro-French literature at the Sarah Isom Center for Women's Studies, and also several informal presentations in classes within the Department of Modern Languages.

COOPERATIVE PROGRAMS

During the 1985-86 academic year, Major Sam Evans, Professor of Aerospace Studies at Mississippi Valley State University, addressed the University of Mississippi Air Force ROTC Leadership Laboratory. In turn, Colonel Robertson and Major Moran have both addressed the ROTC classes at Valley.

During the past two academic years, Ole Miss Air Force ROTC has hosted two Air Force Junior ROTC (High School) Field Days. Mississippi Valley Air Force ROTC assisted the University both times, sending four faculty members (two each year) and approximately ten students (five each year). Also, both schools have formal Dining-Outs to culminate the school year, and each school is represented at the other school's affair. This past year, one Ole Miss Air Force ROTC faculty member and two

students attended the Valley Dining-Out, while two faculty members and two students from Valley came to the University's. In the past, Ole Miss Air Force ROTC has also played Valley in basketball, alternating campuses each year.

Integral to showing students the "Real Air Force" is the Base Visit Program, where students are transported to a base for a weekend, housed in government quarters, and shown the base and its mission. The University reciprocates on these trips with Valley. Last fall, Ole Miss made a trip to Tyndall Air Force Base, FL. In all, approximately thirty-five students (twelve from Valley) and two faculty members (one from Valley) went on this trip.

Janet St. Lawrence of the Department of Psychology participated in a symposium at the meeting of the African Studies Association in New Orleans in Fall, 1985. Three Jackson State Professors were coparticipants.

Dr. Stan O'Dell of the Department of Psychology is a participant this summer in Jackson State's Fullbright-Hayes Kenya Project.

Representatives of Alcorn State University, Mississippi Valley State University, Tougaloo College, and Jackson State University serve on the Mississippi Council of Biology Chairmen. This active group was initiated several years ago by the Chairman at Mississippi State University and Ed Keiser, Chairman at Ole Miss. The group meets twice yearly at various colleges in the state to discuss problems related to administering biology departments. Agenda items in the past have included recruitment and retainment of minority faculty and students.

Dr. Fred Laurenzo of the Department of History met with students and faculty at Rust College, Tougaloo College, and Jackson State University for the purpose of strengthening the relationship between the University of Mississippi and these institutions.

Faculty exchange arrangements took place between the Departments of Music at Mississippi Valley State University and Ole Miss. Dr. Don Lewis, trombone instructor, performed in recital with Dr. Patrick Houlihan, music professor at Mississippi Valley State University. Dr. Lewis and Dr. Houlihan maintain communication whereby Dr. Houlihan composes music for computer and trombone and this music is either premiered on the Valley campus, or the Ole Miss campus, or at other professional meetings.

Another faculty exchange within the Music Department occurred when the Jackson State orchestra director came to Ole Miss to play string bass in a jazz combo and give a jazz workshop for some of the Ole Miss students.

In Fall, 1985, all chairs of Arts Departments in Mississippi, including Jackson State University and Alcorn State University, met in Jackson to discuss common problems and cooperative efforts.

NEW PROGRAMS

The revised curriculum in elementary education, which goes into effect this fall, and revisions in the other teacher education programs which will be implemented during the 1986-87 academic year include a required one-hour course in multicultural education. The remaining curricular content will have an integrated multicultural focus. This attention to the multi-ethnicity of teaching should attract "other race" students more than the traditional focus on the average student.

The School of Education in cooperation with the Black Studies program sponsored a multi-cultural symposium during the first summer session, 1986. This type of open activity should also served to attract "other race" students and faculty members to Ole Miss.

In the Spring of 1985, Jim Jones, the Minority Affairs Officer for the American Psychological Association, presented a colloquim in the Psychology Department, met with undergraduate minority students in Psychology, and met with the Chancellor to discuss APA's scholarship program for minority students. Dr. Jones was on campus at the invitation of Dr. Dan Landis.

Mr. Johnny Parker served in residence at the 1985-86 CLEO Institute at Southern University, and the University of Mississippi contributed funds to that institute. The school continued to accept successful participants from the CLEO program.

All minority students in the Law School receive grants. Plan of Compliance funds provide tuition grants for most of the students. The school continues to receive three G*POP grants which provide tuition and a $4,500 stipend; Ole Miss has been approved for two more fellowships but funds are now frozen. Two of the four major Eastland scholarships for 1985-86 were awarded to minority students.

The Department of Chemistry has exerted every possible effort to recruit minority graduate students. All the students listed in Minority Data Bank were contacted by mail. A fellowship for $9,300 has been offered for 1986-87 to John Adams, a black applicant from Rust College.

Two applications for grant funds to introduce black undergraduate seniors to computational chemistry on microcomputers have been successful. One student is already working and another is scheduled to begin shortly.

As part of the recruitment program in the Department of Communicative Disorders, both faculty and graduate students routinely visit Jackson State University in Jackson, Mississippi. The Department has ties with the Communication Disorders program in Jackson and strongly encourages student applications.

In February, three faculty and two graduate students from the Department of Sociology participated in a sociology conference held at Tougaloo College. Dr. Max Williams visited the campus again in the late spring to meet with faculty and prospective graduate students.

The Social Work Department has an ongoing recruiting program with Northeast Mississippi and Northwest Mississippi Junior Colleges. Many minority students are recruited through this mechanism. This past year the program was expanded to include Holmes County and Hinds Junior Colleges. Both have substantial minority enrollments, and it is assumed that additional "other race" students will be attracted to the department through these efforts.

The Department of Music has tried to strengthen its recruiting at the predominantly black universities within the state and the area. Dr. Sagen made a recruiting trip this past Fall and stopped at Mississippi Valley State, Jackson State, and Grambling University in Louisiana. During these recruiting trips, music students were given information about the department and scholarships. It is Dr. Sagen's feeling that some of these students will be attending Ole Miss in the future. Through past recruiting efforts at Mississippi Valley State, five black students recently graduated in the Master's program in Music from Ole Miss.

The Department of Journalism has received $100,000 for minority scholarships. These scholarships are enabling the Department to attract top minority students to place in the media.

The Chair of the Art Department participated in faculty visits to the campus of Rust College, Jackson State, and Tougaloo.

STRENGTHENING EXISTING PROGRAMS

A BBA in Management Information Systems degree program was approved by the Board of Trustees and became operational in January, 1986, MIS graduates have unique and rewarding opportunities. The demand for MIS graduates is very high. This year *The Wall Street Journal* claimed that there were 17 jobs for every MIS graduate. Minority students will be in high demand of the quality of our program and because of the extreme pressure on businesses to hire professionals.

The School of Business Administration has several openings which will allow the School to recruit quality scholars and to upgrade significantly the quality of programs. This will provide more opportunities to hire quality faculty members and to promote quality programs to potential students across the nation.

Currently the Department of Communicative Disorders, through external funding from the U.S. Department of Education, has received a teacher preparation grant. Its purposes are to upgrade bachelor's level professionals in Communitative Disorders. The grant has been earmarked for minorities to return to the University setting to complete their graduate education.

PLAN OF COMPLIANCE EXPENDITURES

It would be difficult, if not impossible, to list all expenditures made by University in connection with the Plan of Compliance. In addition to Plan of Compliance monies, expenditures are made in regard to the University's Affirmative Action Program and by departments from regular funds without recording that they are utilized for Plans of Compliance or affirmative action activities. Expenditures that are identifiable fall into one of the four categories as noted below.

Plan of Compliance for Personnel and Programs. This category includes salaries for black employees serving in faculty, professional, and technical capacities. To last year's figures (reference this section of last year's report) of $3,761,327, add $943,803 for a total of $4,705,130. (See Appendix H for a list of these expenditures for 1985-86.)

Plan of Compliance for Student Fellowships and Assistantships. Inlcuded in this category are funds for assistantships, fellowships,and scholarships for black students. salaries for black secretaries are also, of necessity, included in fiscal years 1978 to date. The amount for 1985-86 in this category is $94,682 (see Appendix I) which, added to last year's total of $564,340, yields a grand total of $659,022.

Plan of Compliance for the Law School. This category includes funds allocated for minority law student scholarships, and for 1985-86 this amount was $27,585. This amount added to lats year's figure of $158,103 yields a total to date of $185,688. (See Appendix J for an Analysis of the 1985-86 Plan of Compliance Budget.)

Affirmative Action. Expenditures in this category include salaries, advertisements, travel, and expenditures of the Minority Faculty Recruitment Committee. the figure of $184,105 (see Appendix K) should be added to last year's figure of $423,764 for a total to date of $607,869.

The totals for each of these categories and the total expenditures for the Plan of Compliance are as follows:

Plan of Compliance personnel and programs	$4,705,130
Plan of Compliance student fellowships and assistantships	659,022
Law School Plan of Compliance	185,688
Affirmative Action	607,869
TOTAL	$6,157,709

Appendix J depicts the Plan of Compliance allocation to the University from the Board of Trustees of State Institutions of Higher Learning. these expenditures are included with the figures in the first two categories above and are noted here only to identify allocated funds.

APPENDIX A

SCHOOLS VISITED BY THE UNIVERSITY OF MISSISSIPPI TO RECRUIT STUDENTS SEPTEMBER 1985 TO APRIL 1986

Name and Location of School Visited	Predominant Ethnic BLACK	Identification of School* WHITE
Aberdeen High Aberdeen, MS	X	
Ackerman High Ackerman, MS		X
Adams County Christian Natchez, MS		X
Alexander High Starkville, MS	X	
Alcorn Central High Glen, MS		X
All Saints Episcopal Vicksburg, MS		X
Amanda Elzy School Greenwood, MS	X	
Amite School Center Liberty, MS		X
Amory High Amory, MS		X
Anquilla High Rolling Fork, MS	X	
Ashland High Ashland, MS	X	
Baldwyn High Baldwyn, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic BLACK	Identification of School* WHITE
Bassfield High Bassfield, MS	X	
Bay Senior High Bay St. Louis, MS		X
Bayou Academy Boyle, MS		X
Bay Springs High Bay Springs, MS	X	
Beat Four High Waynesboro, MS		X
Belmont High Belmont, MS		X
Benton Academy Benton, MS		X
Benton High Benton, MS	X	
Bentonia High Bentonia, MS	X	
Beulah Hubbard High Union, MS		X
Biggersville High Corinth, MS		X
Biloxi High Biloxi, MS		X
Blair Hgh Hattiesburg, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic BLACK	Identification of School* WHITE
Blue Mountain High Blue Mountain, MS		X
Bogue Chitto High Bogue Chitto, MS		X
Booneville High Booneville, MS		X
Brandon High Brandon, MS		X
Brandon Academy Brandon, MS		X
Broad Street High Shelby, MS	X	
Brookhaven Academy Brookhaven, MS		X
Brookhaven High Brookhaven, MS	X	
Bruce High Bruce, MS		X
Burnsville High Burnsville, MS		X
Buckatunna High Buckatunna, MS	X	
Byhalia Schools Byhalia, MS	X	
Byram High Byram, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic BLACK	Identification of School* WHITE
Caldwell High Columbus, MS		X
Caledonia High Caledonia, MS		X
Calhoun Academy Calhoun City, MS		X
Callaway High Jackson, MS	X	
Canton Academy Canton, MS		X
Canton High Canton, MS	X	
Carroll Academy Carrollton, MS		X
Carthage High Carthage, MS		X
Cathedral High Natchez, MS		X
Central Academy Macon, MS		X
Central Hinds Academy Raymond, MS		X
Central Holmes Acad. Lexington, MS		X
Centreville Academy Centreville, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Chamberlain Hunt Acad. Port Gibson, MS		X
Charleston High Charleston, MS	X	
Clarke Academy Pachuta, MS		X
Clarksdale High Clarksdale, MS	X	
Cleveland High Cleveland, MS		X
Clinton High Clinton, MS		X
Coahoma County High Clarksdale, MS	X	
Coahoma Junior College Clarksdale, MS	X	
Coast Episcopal High Pass Christian, MS		X
Coffeeville High Coffeeville, MS	X	
Coldwater High Coldwater, MS	X	
Columbia Academy Columbia, MS		X
Columbia High Columbia, MS	X	

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Copiah Academy Gallman, MS		X
Copiah Lincoln Junior College Natchez, MS		X
Copiah Lincoln Junior College Natchez, MS		X
Corinth High Corinth, MS		X
Cruger-Tchula Academy Cruger, MS		X
Crystal Springs High Crystal Springs, MS	X	
Cumberland High Maben, MS		X
W. P. Daniel High New Albany, MS		X
Decatur High Decatur, MS		X
Delta Academy Marks, MS		X
Dexter High Tylertown, MS	X	
D'Iberville High Biloxi, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Drew High Drew, MS	X	
Duck Hill High Duck Hill, MS	X	
Durant Attendance Center Durant, MS	X	
Durant High Durant, MS		X
East Central High Hurley, MS		X
East Flora High Flora, MS	X	
East Mississippi Junior College Scooba, MS		X
East Union High Blue Springs, MS		X
Edinburg High Carthage, MS		X
Enterprise High Enterprise, MS		X
Ethel High Ethel, MS	X	
Eupora High Eupora, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Falkner High Falkner, MS		X
Florence High Florence, MS		X
Forest High Forest, MS		X
Forrest County AHS Brooklyn, MS	X	
Forest Hill High Jackson, MS		X
Franklin High Meadville, MS	X	
French Camp Academy Lucedale, MS		X
George County High Lucedale, MS		X
J. Z. George High North Carrollton, MS	X	
Gentry High Indianola, MS	X	
Glen Allan High Glen Allan, MS	X	
Gloster High Gloster, MS	X	
Greenville High Greenville, MS	X	

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic BLACK	Identification of School* WHITE
Greenville Christian Greenville, MS		X
Greenwood High Greenwood, MS		X
Grenada High Grenada, MS	X	
Gulfport High Gulfport, MS		X
Hamilton High Hamilton, MS		X
Hancock North Central Pass Christian, MS		X
Harrison Central High Lyman, MS		X
Hatley School Amory, MS		X
Hattiesburg Prep Hattiesburg, MS		X
Hazlehurst High Hazlehurst, MS	X	
Heidelberg Academy Heidelberg, MS		X
Heidelberg High Heidelberg, MS	X	
Heritage Academy Columbus, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic BLACK	Identification of School* WHITE
Hernando High Hernando, MS		X
Hickory High Hickory, MS		X
Hickory Flat High Hickory Flat, MS		X
Hill High Jackson, MS	X	
Hinds Junior College Raymond, MS		X
Holly Bluff High Holly Bluff, MS	X	
Holly Springs High Holly Springs, MS	X	
Holmes Junior College Goodman, MS		X
Horn Lake High Horn Lake, MS		X
Houston High Houston, MS	X	
Houlka High Houlka, MS		X
Humphreys Academy Belzoni, MS		X
Humphreys County High Belzoni, MS	X	

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Immaculate Conception High Clarksdale, MS	X	
Independence High Independence, MS		X
Ingomar High New Albany, MS		X
Iuka High Iuka, MS		X
Indianola Academy Indianola, MS		X
Itawamba Junior College Fulton, MS		X
Jackson County Junior College Gautier, MS		X
Jackson Academy Jackson, MS		X
Jackson Prep Jackson, MS		X
Jeff Davis Junior College Gulfport, MS		X
Jefferson County High Fayette, MS	X	
Jones Junior College Ellisville, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Jumpertown High Booneville, MS		X
Kemper Academy DeKalb, MS		X
Kennedy, John F. High Mound Bayou, MS	X	
Kilmichael High Kilmichael, MS	X	
Kirk Academy Grenada, MS		X
Kosciusko High Kosciusko, MS		X
Kossuth High Kossuth, MS		X
Lafayette High Oxford, MS	X	
Oxford High Oxford, MS		X
Lamar Foundation High Meridian, MS		X
Lanier High Jackson, MS	X	
Lake High Lake, MS	X	
Leake Academy Madden, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Leakesville High Leakesville, MS		X
Lee Academy Clarksdale, MS		X
Lee High Columbus, MS	X	
Leflore County High Itta Bena, MS	X	
Leland High Leland, MS	X	
Lexington High Lexington, MS	X	
Liberty High Liberty, MS	X	
Louisville High Louisville, MS		X
Lumberton High Lumberton, MS		X
Long Beach High Long Beach, MS		X
McLain High McLain, MS		X
McComb High McComb, MS		X
Maben High Maben, MS	X	

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Madison-Ridgeland Academy Madison, MS		X
Madison-Ridgeland High Madison, MS	X	
Magee Attendance Center Magee, MS		X
Magnolia Academy Jackson, MS		X
Magnolia Heights School Senatobia, MS		X
Manchester Academy Yazoo City, MS		X
Mantachie High Mantachie, MS		X
Marshall Academy Holly Springs, MS		X
Mary Holmes Junior College West Point, MS	X	
Mathiston High Mathiston, MS		X
Mendenhall Attendance Center Mendenhall, MS	X	

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Mercy Cross High Biloxi, MS		X
Meridian High Meridian, MS	X	
Meridian Junior College Meridian, MS		X
Mississippi Delta Junior College Moorhead, MS		X
Mize Attendance Center Mize, MS		X
Monticello High Monticello, MS	X	
Mooreville High Mooreville, MS		X
Morton High Morton, MS	X	
Moss Point High Moss Point, MS	X	
Motley High Columbus, MS	X	
Mount Pleasant Christian Academy Mount Pleasant, MS		X
Mount Olive High Mount Olive, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Murrah High Jackson, MS	X	
Myrtle High Myrtle, MS	X	
Nanih Waiya High Louisville, MS		X
Neshoba Central High Philadelphia, MS		X
Nettleton High Nettleton, MS		X
New Hebron High New Hebron, MS		X
New Hope High Columbus, MS		X
Newton County Acad. Decatur, MS		X
Newton High Newton, MS		X
New Site High New Site, MS		X
North Delta High Pleasant Grove, MS		X
Northeast Jones High Laurel, MS		X
Northeast Junior College Booneville, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
North Forrest Attendance Center Hattiesburg, MS		X
North Natchez Adams High Natchez, MS	X	
North Panola High Sardis, MS	X	
North Pike High Summitt, MS		X
North Pontotoc Attendance Center Ecru, MS		X
North Sunflower Acad. Drew, MS		X
Northwest Junior College Senatobia, MS	X	
Northwest Junior College-DeSoto Southhaven, MS		X
Northwest Rankin Attendance Center Brandon, MS		X
McLaurin Attendance Center Florence, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Noxapater High School Noxapater, MS	X	
Noxubee County High Macon, MS	X	
Nugent Center School Benoit, MS	X	
Oak Grove High Hattiesburg, MS		X
O'Bannon High Greenville, MS	X	
Ocean Springs High Ocean Springs, MS		X
Okolona High Okolona, MS	X	
Olive Branch High Olive Branch, MS	X	
Our Lady's Academy Bay St. Louis, MS		X
Our Lady of Victories High Pascagoula, MS		X
Oxford High Oxford, MS		X
Parklane Academy McComb, MS		X
Pascagoula High Pascagoula, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Pass Christian High Pass Christian, MS		X
Pearl-McLaurine High Pearl, MS		X
Pearl River Central High Carriere, MS		X
Perkinston Junior College Perkinston, MS		X
Perry Central High New Augusta, MS		X
Petal High Hattiesburg, MS		X
Pelahatchie Attendance Center Pelahatchie, MS		X
Philadelphia High Philadelphia, MS		X
Picayune High Picayune, MS		X
Pillow Academy Greenwood, MS		X
Pine Grove High Ripley, MS		X
Piney Woods High Piney Woods, MS	X	

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Pisgha High Sandhill, MS	X	
Pontotoc High Pontotoc, MS		X
Poplarville High Poplarville, MS		X
Potts Camp High Potts Camp, MS	X	
Port Gibson High Port Gibson, MS	X	
Prentiss Christian School Prentiss, MS		X
Prentiss High Prentiss, MS	X	
Provine High Jackson, MS	X	
Puckett Attendance Center Puckett, MS		X
Purvis High Purvis, MS		X
Quitman High Quitman, MS		X
Raleigh High Raleigh, MS		X
Rankin Academy Star, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Raymond High Raymond, MS	X	
Rebul Academy Learned, MS		X
Richland High Florence, MS		X
Richton High Richton, MS		X
Ripley High Ripley, MS		X
Riverside High Riverside, MS		X
Rolling Fork High Rolling Fork, MS	X	
Rosa Fort High Tunica, MS	X	
Rosedale High Rosedale, MS	X	
Ruleville High Ruleville, MS	X	
Saint Aloysius High Vicksburg, MS		X
Saint Andrews Episcopal Jackson, MS		X
Saint John High Gulfport, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Saint Joseph High Jackson, MS		X
Saint Joseph High Greenville, MS		X
Saint Stanislaus High Bay Saint Louis, MS		X
Saint Martin High Ocean Springs, MS		X
Salem High Tylertown, MS	X	
Saltillo High Saltillo, MS		X
Sand Flat High Mount Pleasant, MS	X	
Scott Central High Forest, MS	X	
Senatobia High Senatobia, MS		X
Shannon High Shannon, MS		X
Shaw High Shaw, MS	X	
Simmons High Hollandale, MS	X	
Simpson County Acad. Mendenhall, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Smithville High Smithville, MS		X
Southaven High Southave, MS		X
South Leake High Walnut Grove, MS		X
South Natchez High Natchez, MS		X
South Pike High Magnolia, MS	X	
South Pontotoc High Pontotoc, MS		X
Southwest Junior College Summit, MS		X
Starkville High Starkville, MS		X
State Line High State Line, MS		X
Stone High Wiggins, MS		X
Sturgis High Sturgis, MS	X	
Strider Academy Charleston, MS		X
Stringer High Stringer, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Sumrall High Sumrall, MS		X
Sylva Bay Academy Bay Springs, MS		X
Taylorsville High Taylorsville, MS		X
Tchula Attendance Center Tchula, MS	X	
Terry School Terry, MS	X	
Thrasher High Booneville, MS		X
Water Valley High Water Valley, MS	X	
Watkins High Laurel, MS		X
Waynesboro High Waynesboro, MS	X	
Weir High Wesson, MS		X
West Clay County High Pheba, MS	X	
West Jones High Laurel, MS		X
West Lauderdale High Colinsville, MS	X	

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
West Lincoln High Brookhaven, MS		X
West Marion High Foxworth, MS		X
Weston High Greenville, MS	X	
West Panola Academy Batesville, MS		X
West Point High West Point, MS	X	
West Tallahatchie High Webb, MS	X	
West Union High West Union, MS		X
West Union High Pinola, MS	X	
Wheeler High Wheeler, MS		X
Wilkinson County Christian Woodville, MS		X
Tishomingo High Tishomingo, MS		X
Tremont High Tremont, MS		X
Tri-County Academy Flora, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Trinity Episcopal School Natchez, MS		X
Tunica Institute Tunica, MS		X
Tupelo High Tupelo, MS		X
Tylertown High Tylertown, MS	X	
Union Academy Georgetown, MS		X
Utica High Utica, MS	X	
Utica Junior College (Hinds) Utica, MS	X	
Vancleave High Vancleave, MS		X
Vaiden High Vaiden, MS	X	
Vardaman High Vardaman, MS	X	
Velma Jackson Camden, MS	X	
Vicksburg High Vicksburg, MS	X	
Walnut High Walnut, MS		X

APPENDIX A – Continued

Name and Location of School Visited	Predominant Ethnic Identification of School* BLACK	WHITE
Walthall Academy Tylertown, MS		X
Washington School Greenville, MS		X
Warren Central High Vicksburg, MS		X
Wilkinson County High Woodville, MS	X	
William Winans High Centreville, MS	X	
Wingfield High Jackson, MS	X	
Winona Academy Winona, MS		X
Winona High Winona, MS		X
Woodland High Woodland, MS		X
Woodland Hills Baptist Academy Jackson, MS		X
Wood Junior College Mathiston, MS		X
Yalobusha Academy Coffeeville, MS		X
Yazoo City High Yazoo City, MS	X	

APPENDIX B

Minority Students

"We're For You! Ole Miss"

[PHOTO OMITTED: BLACK STUDENT AND WHITE STUDENT]

Ole Miss
THE UNIVERSITY OF MISSISSIPPI

APPENDIX C

Brochure on Mississippi Achievement and Leadership Conference

THE UNIVERSITY OF MISSISSIPPI

(Ole Miss)

THE LEARNING DEVELOPMENT CENTER

[ILLUSTRATION OMITTED]]

A
Program For Academic and Cultural Survival

THE UNIVERSITY OF MISSISSIPPI

Mississippi Achievement And Leadership Conference

[PHOTO OMITTED WHITE MALE HANDING DIPLOMA TO BLACK FEMALE WEARING CAP AND GROWN]

11:25-11:50 a.m.
Financial Aid Workshop
Ms. Mary Givhan, Assistant Director, Financial Aid, Union 404 & B

Noon
Lunch, East Room. Cafeteria
Speaker, Coach Ken Gibson, Head Track Coach and Associate Professor of Physical Education

1:15-2:30 p.m.
CHOICE OF WORKSHOPS

1. Blood Pressure in the Anesthetized Dog; Effect of Drugs
   Dr. I. W. Waters, Professor of Pharmacology, Faser Hall 304

   If you object to using animals in research, you probably should not attend this workshop.
2. Pre-Law to Law, an Overview
   Ms. Bettye Davis, Student Recruiter, Law Center 303
3. The Health Professions and Minority Students
   Dr. Hugh Bateman, Assistant Dean of Liberal Arts for Health Professions Advisement, Union 403
4. Career Opportunities in Accountancy [sic] Assistant Professor of [illegible]

February 20, 1986

3:00-6:00 p.m.
Registration. Ole Miss Union Lobby

6:00 p.m.
Dinner, East Room, Cafeteria
Welcome, Chancellor R. Gerald Turner

7:30 p.m.
Reception Sponsored by Student Programming Board

February 21, 1986

8:10-9:10 a.m.
Breakfast with Undergraduate Deans and Members of the Ole Miss Family, East Room, Cafeteria

9:30-10:45 a.m.
CHOICE OF WORKSHOPS

1. Opportunities in Journalism
   Dr. Will Norton, Chairman and Professor of Journalism, Farley Hall 231C
2. Satellite Communications
   Dr. Mark Tew, Assistant Professor of Electrical Engineering Anderson Hall Lobby
3. Opportunities in Education for Minority Students
   Dr. James S. Payne, Dean of School of Education and Professor of Special Education, Union 403

11:00-11:20 a.m.
Armed Services and The University of Mississippi
Captain Dwight Yarbrough, Union 404 A & B

3:00-5:00 p.m.
BLACK ALUMNI PANEL DISCUSSION, Union Ballroom
After Ole Miss: An Alumni Perspective
Dr. Lucius Williams, Moderator
Panelists:
Mr. Tyrone Bates
Ms. Rose J. Flenorl
Ms. Lurlene B. Irvin
Mr. Gary Turner
Mr. Daryl Williams
Ms. Patricia T. Wise

6:30 p.m.
MISSISSIPPI ACHIEVEMENT AND LEADERSHIP BANQUET
Guest Speaker, Judge A. C. Wharton. Public Defender, Memphis

7:30-9:30 p.m.
Entertainment – Greek Show
Sponsored by Alpha Phi Alpha Fraternity

9:30 p.m.
Dance
Sponsored by Omega Psi Phi Fraternity

February 22, 1986

8:30-10:00 a.m.
Breakfast, Ole Miss Union
Conference ends

APPENDIX D

Brochure on the Health Careers Incentive Program for Minority and Economically Disadvantaged Students

THE UNIVERSITY OF MISSISSIPPI

HEALTH CAREERS
INCENTIVE
PROGRAM
for
MINORITY AND
ECONOMICALLY
DISADVANTAGED
STUDENTS

Medical Careers in Osteopathic Medicine, Pharmacy, Optometry and Podiatry

[Illustration Omitted]

APPENDIX E

Brochure on the Learning Development Center

APPENDIX F

Affirmative Action Plan Revisions

March 1, 1986, through February 28, 1987

THE UNIVERSITY OF MISSISSIPPI
AFFIRMATIVE ACTION PLAN

VOLUME I

March 1, 1986–February 28, 1987

The attached revisions are to serve as a supplement to the March, 1985-February, 1986 Affirmative Action Plan, Volume I. The supplement and the 1985-86 Affirmative Action Plan will constitute the March 1, 1986-February 28, 1987 Affirmative Action Plan for the University of Mississippi.

Strike pages 8 and 9 and replace with the following:

The Vice Chancellor for Academic Affairs, in conjunction with the deans and department chairs, is responsible for the recruitment of faculty. The appropriate Vice Chancellor, in conjunction with heads of specific budget units, is responsible for the recruitment in the nonacademic subdivisions of the University.

The University Office of Personnel is responsible for making known the University's commitment to employ members of minority groups and females to the Mississippi Employment Security Commission for soliciting its assistance in identifying those individuals with requisite skills for projected openings in nonfaculty classifications throughout the University.

The Office of Personnel shall list all position openings with the Mississippi Employment Security Commission which shall screen, test and refer applicants for support

staff positions back to the University. The Office of Personnel serves as liaison between the applicants and the employer. The Office of Personnel shall be responsible for listing all vacancies with the University through the faculty and staff news bulletin, *The Monday Report*, and other publications as designated by the department head. All job announcements will be posted on the Office of Personnel bulletin board and on bulletin boards within the department that is recruiting applicants. The Office of Personnel is the only unit authorized to place advertisements regarding job openings on behalf of the University of Mississippi.

Administrative, Faculty and Professional Staff

Each administrative, academic, or professional position opening will be (1) posted on the bulletin board of the department, (2) advertised regionally and/or nationally in appropriate publications, (3) sent to a representative number of institutions of higher learning and/or agencies through a letter of recruitment. The position will remain open for at least thirty (30) days after the announcement. In cases where a vacancy becomes known to the general public through the news media (radio, TV newspaper, etc.) the requirements mentioned above shall be waived as it is assumed that such notification will be deemed adequate.

Each advertisement will include the following:

The closing date designated to ensure consideration.
The date employment is to begin, if possible.
The statement, "The University is an Equal Opportunity Employer."

Support Staff

All announcements and advertisements regarding job openings will be posted on the bulletin board within the department that is recruiting applicants and will be listed by the Director of Personnel with the Mississippi Employment Security Commission. The position will remain open for a minimum of seven (7) days.

Temporary Employment

Full affirmative action procedures are not required for temporary employment. Temporary employment is defined by the University of Mississippi as that employment which exists for no more than six months for staff and twelve months or less for faculty with no guarantee for reappointment. Included within the definition of temporary employment are those employees who are (1) a substitute for a permanent employee on a brief leave; (2) those employed for an interval during peak periods for a specific length of time; and (3) those employed in positions created by an emergency.

Administrative, Faculty, and Professional

An active file of administrative, faculty, and professional applicants for temporary positions will be maintained by the Affirmative Action Officer. Advertisements for the applicant file will be run three times a year. When a Department or other employer needs to employ on a temporary basis, the department chair or other employer must consult with the Affirmative Action Officer and review the applications of all individuals in the file who meet minimum qualifications for the temporary position. The department chair or other employer must post a notice of the position opening on the bulletin board of the depart-

ment and the bulletin board of the Personnel Office. The position will be open for one week and listed in the *Mor day Report*.

In emergency situations and with approval of the Affirmative Action Officer, the one-week time for posting may be shortened and the requirement of advertisement in *The Monday Report* waived.

Support Staff

An active file of support staff applicants for temporary positions will be maintained by the Office of Personnel. Advertisements for the applicant file will be run three times a year. When a department or division needs to employ on a temporary basis, the employer must consult with the Office of Personnel and review applications for individuals in the file who meet minimum qualifications for the temporary position.

An individual employed on a temporary basis is not to be reappointed to the position or subsequently hired on a full-time basis without compliance with all affirmative action procedures.

Search and Screen Guidelines

The search and screening procedures of the University are designed to ensure that extra effort is made to seek out and recruit black, female, and other minority candidates.

Search and screening procedures shall be executed without bias to ensure equitable treatment of all candidates. The following guidelines shall be utilized:

1. A search committee is required for all permanent faculty and administrative positions.
2. It is encouraged that the search committee include a black or other minority faculty/staff member and a female faculty/staff member where

practicable. In units where there is under-representation of these groups, such representative may be chosen from outside the unit. The search committee may include a student representative who is black, another minority, or a woman, in addition to the inclusion of a faculty staff person from the representative group.

3. *Faculty*
   a. A search committee is appointed by the department head and a list of the names of the members of the search committee is forwarded

THE UNIVERSITY OF MISSISSIPPI
AFFIRMATIVE ACTION PLAN

VOLUME I

March 1, 1986 – February 28, 1987

The attached revisions are to serve as a supplement to the March, 1985 – February, 1986 Affirmative Action Plan, Volume I. The supplement and the 1985-86 Affirmative Action Plan will constitute the March 1, 1986 – February 28, 1987 Affirmative Action Plan for the University of Mississippi.

Strike page 14 and replace with the following:

color, creed or religion, national origin, sex, handicap, or veteran status. There is no unified salary program for University faculty. The market demand for a discipline, the skills and qualifications of the faculty member, and the amount and quality of specific experience in the field of practice account for salary differences among faculty.

Transfer and Promotion for Classified Employees

Definition:

a. Promotion – the moving of an employee from one position to another of a higher level within the classification system.
b. Transfer – the moving of an employee from one position to another at the same classification level or one requiring comparable skills within the same pay range.
c. Reclassification (of a position) – the moving of a position within the classification system when there is a significant change in the duties and responsibilities of a position. If the only change

which occurs in the position is that new duties have been added which do not require additional skills, the reclassification is not warranted.

Internal Promotion

Positions within budget units (account numbers) may be filed by promotion without outside advertisement with the approval of the Vice Chancellor of the Division. The position will be announced within the budget unit allowing all persons within that unit to compete for the position. In cases where the Department has a history of significant underutilization of minorities and females, the Vice Chancellor may deny the Department request for internal promotion.

The position left vacant by the promotion shall be advertised according to current affirmative action guidelines.

External Promotion

Positions filled by promotion across budget units shall be advertised by submitting an announcement to the Office of Personnel for listing in the faculty and staff news bulletin, *The Monday Report*, and posting the announcement on the bulletin board within the department that has the position open. For academic, professional and administrative positions, the position must remain open fifteen (15) days after posting before it can be filled. For all other openings, the position shall be listed with the Office of Personnel for at least one week.

There is normally a minimum requirement of six months continuous service before an employee becomes eligible to transfer or promotion; however, this requirement may be waived with mutual consent between both departments.

An employee does not need to seek approval from the supervisor before applying for either a promotion or transfer to another department.

APPENDIX G

Equal Employment Opportunity/Affirmative Action Orientation Program

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FAIR EMPLOYMENT PRACTICES

Equal Employment Opportunity/Affirmative Action Orientation Seminar – 1986

9:15- 9:30	Overview and Objectives
9:30-10:30	Recruitment, Selection and Placement
10:30-11:30	Discipline and Discharge
11:30- 1:30	Lunch
1:30- 2:30	Preventing Sexual and Racial Harassment in the Workplace
2:30- 3:30	Drug and Alcohol in the Workplace

APPENDIX H

Plan of Compliance for Personnel and Programs, 1985-1986

PLAN OF COMPLIANCE, PERSONNEL & PROGRAMS 1985-86

Afro-American Studies Program		
Total Budget, 1985-86	$67,742	
Amount for Director's Salary*	– 32,428	
Amount for Professor's Salary*	– 14,306	
Budget Minus Salaries for Black Employees		$ 21,008
Learning Development Center		
Total LDC Budget, 1985-86	$ 73,333	
Amount for Director's Salary*	– 13,356	
Amount for Counselor's Salary*	– 12,600	
Budget Minus Salaries for Black Employees		$ 47,377
Salaries of Black Faculty and Staff Members		
5 Managerial	$135,691	
11 Faculty	268,882	
22 Professional	424,481	
5 Technical	46,364	
Total for Salaries		$875,418
TOTAL EXPENDITURE PLAN OF COMPLIANCE		$943,803

* These salary amounts subtracted from the total budgets since the total salaries of these individuals are included in salaries of black faculty and staff members.

APPENDIX I

Plan of Compliance for Student Fellowships and Assistantships – FY 1985

PLAN OF COMPLIANCE STUDENT FELLOWSHIPS AND ASSISTANTSHIPS FY 1985

	Actual 1985-86
Plan of Compliance Allocation	$143,659
Less Faculty, Professional and Technical Salaries	48,977
*Student Fellowships and Assistantships	94,682

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* Also includes secretarial salaries and fringe benefits

APPENDIX J

Analysis of Budget, Plan of Compliance FY 1985-86

ANALYSIS OF BUDGET PLAN OF COMPLIANCE FY 1985-86

		ACTUAL 1985-86
SALARIES & WAGES		
Professional		$ 26,940
Academic Support		4,990
Libraries		17,047
Clerical/Secretarial		15,276
Student Assistants (estimated)	15,000	
Subtotal		$ 79,253
FRINGES		$ 16,821
CONTRACTUAL SERVICES		
Graduate Fellowships (estimated)	$ 20,000	
Law Fellowships (estimated)	27,585	
Subtotal		$ 47,585
TOTAL BUDGET		$143,659

APPENDIX K

Funds Expended on Affirmative Action

1985-86

FUNDS EXPENDED ON AFFIRMATIVE ACTION 1985-86

Salaries (proportionately) for Persons Responsible for Affirmative Action

Affirmative Action Officer Total Salary 1985-86	$ 26,200
Assistant Vice Chancellor for Academic Affairs and Associate Professor of Educational Administration 1/4 Salary 1985-86	$12,010
Unit Affirmative Action Officers, 5% of Salary 1985-86	
Continuing Education	$ 2,086
Accountancy	2,727
Student Affairs	1,590
Liberal Arts	2,443
School of Law	1,750
Athletic Department	1,080
Administrative Affairs	2,152
School of Education	1,681
School of Engineering	3,006
School of Pharmacy	2,494
School of Business Administration	1,372
Alumni Affairs	1,677
University Affairs	1,147
TOTAL	$ 25,205
TOTAL OF ALL SALARIES	$ 63,415
Cost of Advertisements	
1985-86 (July 1985-June 1986)	$ 30,790
Expenditure of Minority Faculty Recruitment Committee	89,900
TOTAL OF SALARIES AND ADVERTISEMENT, AND EXPENDITURES OF MINORITY FACULTY RECRUITMENT COMMITTEE	$184,105

BOARD'S EXHIBIT 132

[Photo Omitted]

Delta State University

ADMISSION REQUIREMENTS

HIGH SCHOOL COURSE REQUIREMENTS

Beginning with the fall term of 1986, all entering freshmen students must have earned the following high school units in grades 9-12:

Subject	Units
English	4 – All must require substantial writing components.
Mathematics	3 – Algebra I, Geometry, and Algebra II.
Sciences	3 – Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of those chosen must be laboratory based.
Social Sciences	2½ – Must include United States History and American Government.
Required Elective	1 – Choose from a foreign language or mathematics (above Algebra II) or a science (chosen from the science courses shown above).

It is also recommended that students pursue two units of foreign languages, take a mathematics course during their senior year, take a computer science course, and gain a level of typing proficiency.

Any student with an ACT assessment composite score of 24 or above is exempt from the high school units requirement.

Any student with less than the composite score of 24 who has a deficiency in the required high school units may be exempt from an area of deficiency by having an ACT assessment subtest score of at least 18 on the appropriate subtest. The option is not available for any student with more than one deficiency.

Any student who has a deficiency or deficiencies in the required high school units and who does not meet the exemption criteria shown above must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a "C" average (2.0 G.P.A. on a 4.0 scale) in the following 24 semester credit hours:

6 semester hours	English Composition
3 semester hours	College Algebra or above
6 semester hours	Laboratory Science
9 semester hours	Transferable Electives

REQUIREMENTS FOR TRANSFERS:

A student who was eligible for admission to the freshmen class at Delta State but chose to attend another institution may transfer at any time as long as the student has a "C" average or better and is eligible to return to that institution.

Any student who was *not* eligible for admission to the freshman class must attend an accredited institution of

higher learning other than one of Mississippi's eight state supported universities and attain a "C" average (2.0 G.P.A. on a 4.0 scale) in the following 24 semester credit hours.

6 semester hours	English Composition
3 semester hours	College Algebra or above
6 semester hours	Laboratory Science
9 semester hours	Transferable Electives

ACT REQUIREMENT:

A minimum of a fifteen (15) composite score on the ACT is required.

Out-of-state students enrolling as first-time entering freshmen must present a minimum Composite ACT score of 15 or a Scholastic Aptitude Test (SAT) score of 720.

DEVELOPMENTAL COURSE REQUIREMENTS:

Students who score below twelve (12) on the English portion of the ACT (300 SAT verbal) and/or twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

IMMUNIZATION REQUIREMENTS:

All students (including transfers) entering Delta State for the first time and enrolling for academic credit must document proof of immunization for measles and rubella.

a. Proof of immunization may be documented in the following manner:
   (1) Documentation (month and year) of immunization which was received after the first birthday;

(2) Positive measles and rubella serology titer with date;
(3) Physician-documented history of having had measles with date of the disease. History of rubella is not acceptable.

b. Temporary exceptions—one semester:
(1) Pregnant women;
(2) Women suspecting pregnancy;
(3) Women anticipating pregnancy within three months.

c. Permanent exception:
(l) Medical disease which will cause a permanent contraindication to immunization;
(2) All persons born prior to 1957.

For further information write to:

Office of Admissions
P.O. Box 3151 DSU
Cleveland, MS 38733

Phone: 1-800-GO TO DSU

BOARD'S EXHIBIT 133

JACKSON STATE UNIVERSITY
IN THE 21ST CENTURY

WE
CHART THE
FUTURE
FOR
WHITE STUDENTS TOO!

ACADEMICS . . .

CAREER PLANNING AND PLACEMENT . . .The Sweet Smell of Success

ACADEMIC SCHOLARSHIPS

HONORS DIVISION

EXPENSES AND FINANCIAL AID

Find out how hundreds of
WHITE STUDENTS
avoid the escalating cost
of a college education by
enrolling as a commuting student at JSU

Approximately 75 percent of the commuting students enrolling at JSU will qualify for and receive adequate financial aid to defray the total cost of their tuition.

Welcome to JSU

Jackson State University is located in Jackson, Mississippi, the capitol of the state. Somewhat centrally located, JSU is readily accessible to both commuting and on-campus students. Situated in a city of 300,000, our students are exposed to the many cultural events taking place in this area and are provided many opportunities for part time employment while attending Jackson State University.

Hundreds of white students have discovered the excellent academic preparation available at Jackson State. Although in the past Jackson State's history has been that of a black institution, JSU is the most racially mixed institution in Mississippi.

The cost of a college education has risen drastically during the last decade. However, commuting students will find that a college education is affordable at JSU. In fact, upward of 75% of the commuting students enrolling at JSU will qualify for and receive sufficient financial aid to cover the total cost of their tuition.

The commuting student pays approximately one-third (1/3) the cost of on campus students and less than one-fourth (1/4) the cost of the students attending a distant college or university.

With the above opportunities available, you can afford a COLLEGE EDUCATION at JSU. Join us in the pursuit of ACADEMIC EXCELLENCE.

Admission Requirements

All incoming undergraduate students are required to submit the following official documents:

Freshmen

1. Application for Admission
2. High School Transcript
3. ACT Scores

Transfer Students

1. Application for Admission
2. Transfer Transcript

Academic Programs at JSU

Major	*Degrees Offered*			
	B	*M*	*S*	*D*
SCHOOL OF BUSINESS				
ACCOUNTING	•			
BUSINESS EDUCATION	•			
OFFICE ADMINISTRATION	•			
ECONOMICS	•			
TEACHING ECONOMICS	•			
FINANCE	•			
GENERAL BUSINESS	•			
MANAGEMENT	•			
MARKETING	•			
PROFESSIONAL ACCOUNTANCY		•		
BUSINESS ADMINISTRATION		•		
BUSINESS EDUCATION		•		
SCIENCE IN ECONOMICS		•		

Major	*Degrees Offered*			
	B	*M*	*S*	*D*
SCHOOL OF EDUCATION				
ADULT EDUCATION		•		
EARLY CHILDHOOD EDUCATION		•	•	•
EDUCATIONAL ADMINISTRATION AND SUPERVISION		•	•	
EDUCATIONAL TECHNOLOGY		•		
ELEMENTARY EDUCATION	•	•	•	
GUIDANCE AND COUNSELING		•	•	
HEALTH PHYSICAL EDUCATION AND RECREATION	•	•	•	
READING		•	•	
SECONDARY EDUCATION	•	•	•	
SOCIAL SCIENCE EDUCATION	•			
SPECIAL EDUCATION	•	•	•	
SCHOOL OF LIBERAL STUDIES				
ART	•			
ART EDUCATION	•	•		
CRIMINAL JUSTICE AND CORRECTIONAL SERVICES	•			
ENGLISH	•	•		
ENGLISH LITERATURE	•			
HISTORY	•	•		
MASS COMMUNICATIONS	•			
MATHEMATICS	•	•		
MATHEMATICS EDUCATION	•	•	•	
MODERN FOREIGN LANGUAGES SPANISH	•			
MUSIC (PIANO PERFORMING)	•			
MUSIC EDUCATION	•	•		
POLICE SCIENCE	•			

Major	Degrees Offered B	M	S	D
SCHOOL OF LIBERAL STUDIES – Continued				
POLITICAL SCIENCE	•	•		
PSYCHOLOGY	•			
PUBLIC POLICY & ADMINISTRATION		•		
SOCIAL WORK	•			
SOCIOLOGY	•	•		
SPEECH	•			
URBAN STUDIES	•			
SCHOOL OF SCIENCE & TECHNOLOGY				
BIOLOGY	•	•		
CHEMISTRY	•	•		
COMPUTER SCIENCE	•	•		
ENVIRONMENTAL SCIENCE		•		
INDUSTRIAL ARTS EDUCATION	•	•		
INDUSTRIAL TECHNOLOGY	•			
FIRE PREVENTION & SAFETY TECHNOLOGY	•			
METEOROLOGY	•	•		
PHYSICS	•			
SCIENCE EDUCATION	•	•	•	

White Students and Academic Scholarships

To demonstrate its commitment to academic excellence, JSU awards a limited number of academic scholarships annually. These scholarships are awarded on a competitive basis to students who have exemplified academic excellence at the high school or junior college level.

Academic scholarships are renewable at the end of the academic year, for a four year (eight semesters) period for incoming freshmen and a two year period for junior college graduates. Scholarship applicants are selected based on the following criteria: (1) Cumulative GPA, (2) Composite ACT/SAT score, and (3) Rank in graduating class.

To obtain additional information concerning the Academic Scholarship Program, please contact:

Steve Walker
Assistant Director of Special Recruitment
Office of Admissions
Jackson State University
Jackson, Mississippi 39217
601-968-2100
Toll Free in Mississippi: 1-800-682-5390

The Academic Honors Division

The Academic Honors Division at Jackson State University offers to superior students the opportunity to: (1) Follow a program of study at a pace commensurate with their ability, (2) increase intellectual interaction among their peers, professors and advisor, (3) Participate in independent reading and research beyond the regular curriculum, and (4) Participate in interdisciplinary seminars.

The Honors Division is also individualized to the extent that each student, along with an academic advisor and the Director of the Honors Division is provided a course of study specifically designed to promote the accomplishments of his/her educational and career goals.

For additional information concerning the Honors Division, please contact:

Dr. Maria Luisa Alvarez Harvey
Director of Honors Division
Jackson State University
Jackson, MS 39217
(601) 968-2107

Career Planning and Placement Center

Recruiters from more than 300 companies and universities all over the United States come to Jackson State during the year to interview graduates for good-paying positions and graduate study. The Career Planning and Placement Center arranges these visits and even provides you with training for writing a resume and interviewing. The Center maintains a library with current information about jobs, employers, medical and graduate schools and a job bank.

We keep in touch with the business world through the industrial Cluster program, sponsored by the National Alliance of Businessmen and the Career Planning and Placement Center. Top officers of leading businesses give advice about what we should teach as well as help students find jobs.

These programs help our students through college and beyond, but this would be meaningless if we did not back them up with superior academic programs. Jackson State University is accredited by the Southern Association of Colleges and Schools, National Council for the Accreditation of Teacher Education and other professional organizations.

Financial Aid

The Office of Student Financial Aid coordinates all financial assistance programs at JSU. The objective of the financial aid program is to assist qualified financial aid applicants in securing funds to cover the difference between what they can afford to pay and the actual cost to attend Jackson State University.

All financial awards are contingent upon admission to the University and the proper application for aid. Students seeking financial aid should complete the Financial Aid Form (FAF) and forward it to College Scholarship Service (CSS) at the address indicated on the form.

Jackson State University recruits, admits and provides services, financial aid, and instruction to all students without regard to race, sex, religion, handicap or national origin.

BOARD'S EXHIBIT 134

Dear Student,

I invite you to a new educational experience!

Excellence and opportunity are the best descriptions of the MUS experience. The academic programs are strong and challenging. Members of the faculty and staff are experts in their fields and are willing to talk and work with students. When you come to MSU, you will find plenty of activities geared to help you maintain a sense of cultural heritage and pride. Also, you will find other Black students, Black faculty, and Black staff who are also eager to help you. Your MSU experience will be one of the best experiences you will ever have.

I welcome you to MSU.

Sebetha Jenkins-Leggette
Assistant to the Vice President
Mississippi State University

[PHOTO OMITTED]

BLACK FACULTY AND STAFF

The number of Black faculty and staff at MSU is growing, and while it has not yet reached its anticipated level, Blacks are represented in nearly every academic and administrative unit. Black members of the faculty and staff work diligently to enhance their status and the status of their students. Black faculty and staff members understand Black students' problems, and you can be sure that you'll have their support at State.

* * * * *

ADMISSION INFORMATION

FRESHMEN: If you are a high school senior seeking admission to Mississippi State as a freshman, you are asked to submit two items: 1) a completed application-for-admission form and 2) an official copy of your ACT scores. An official copy of your high school transcript after graduation is required if you are majoring in architecture or engineering.

TRANSFER STUDENTS: To be classified as a transfer student, you must have attended another senior college or a junior college and have earned a minimum of 12 semester hours or the equivalent.

If you are a student at another senior college or a junior college and are seeking admission to Mississippi State, you are asked to submit two items: 1) a completed application-for-admission form and 2) an official transcript of credits earned at all other colleges you have attended. (High school transcripts and ACT scores are not required.)

Although you may apply for admission to MSU at your convenience, most students submit application forms during the fall semester for the following year. It is advantageous for your application and other documents to be on file at least 20 days before you register for any semester.

Mississippi State's Office of Admission receives and processes your application and notifies you of your admission status. Your application and other documents should be sent to the Director of Admissions, P.O. Box 5268, Mississippi State, MS 39762. Phone (601) 325-2224.

MSU's general catalog provides detailed information on admission policies, academic policies, university-student policies, and the complete curriculum. You may obtain a free copy of the catalog by writing the Office of the Registrar, Box KR, Mississippi State, MS 39762.

* * * * *

BOARD'S EXHIBIT 139

[PHOTOS OMITTED]

Mississippi University for Women

[PHOTOS OMITTED]

MUW
EXPANDING HORIZONS

Today is an exciting time for you to become part of Mississippi University for Women for the The W is celebrating its centennial anniversary.

Throughout its colorful 100-year history, MUW has been a place where students like you could build and grow for tomorrow. The tradition of this university has been that of a pioneer in the higher education of women. It is the university of writer Eudora Welty, National Democratic Party Secretary Dorothy V. Bush, advertising executive and writer Jo Foxworth, scientist Elizabeth Lee Hazen, Mississippi Supreme Court Justice Lenore Loving Prather, and archivist Marie Charlotte Stark.

The future of this university is built upon its past. It is the future of doctors and nurses; it is the future of business executives, lawyers, editors and actresses; it is what you make it; it is your future.

While MUW is now coeducational, its primary mission is based upon a strong commitment to the education of young women who wish to develop to their highest potential.

MUW provides a stimulating environment for aspiring young scholars. The university maintains the highest admission standards of all the state-supported universities in Mississippi. Its highly skilled faculty offers excellent teaching, small classes and personal attention. This personal student/teacher interaction is a significant factor in the successful growth and development of students.

Campus physical facilities are first-class with some, such as Cromwell Communications Center and Pohl Physical Education/Assembly Building, ranking among the best in the nation.

[PHOTO OMITTED]

While providing a strong liberal arts education MUW emphasizes career preparation. You can master computer skills on state-of-the art computer equipment; gain experience doing "live" broadcasts on WMUW; discover new facts about textiles in a research laboratory; act before numerous theater audiences; or achieve first-hand experience, regardless of your career choice, through internships and other educational and extra-curricular activities.

The W offers you many unique opportunities to learn on its beautiful, historic campus. Its rich heritage, special traditions and spirit are contagious. There is only one way you can truly understand what The W is—visit the campus. Come see The W for yourself.

Expenses

MUW is a state-supported institution. Consequently, students can have the quality education available at MUW

at a lower cost than at private colleges. The following indicates expenses for the 1984-85 academic year:

Per Semester:	General Fees	$ 462.50
	Room, meals and post office box rent	830.00
		$1,292.50
	Out-of-state	538.00
	Private room	196.25

Fees may be paid at the beginning of each semester or over a 10-month period at no additional cost.

ADMISSIONS REQUIREMENTS

Each applicant must fill out an admission application and send it along with an application fee of $10 non-refundable to the Office of Admissions. Applicants who desire to live in a residence hall must submit a $25 (*non-refundable*) room deposit with a housing application.

Each applicant must also submit a satisfactory score on the American College Test (ACT) and an offical high school transcript. An ACT score of 16 is required for admission to MUW; however, a limited number of applicants with an ACT of 15 will be considered for admission on the basis of alternate criteria.

Any student who has earned the required high school units but whose ACT composite score is below MUW's required score must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a "C" average in the following 24 semester credit hours:

6 hours of English Composition
3 hours of College Algebra or above
6 hours of Laboratory Science
9 hours of Transferable electives

In addition to the above, transfer students are accepted on the basis of the rating of the college from which they desire to transfer, the type of program pursued and the quality of work done at the college level. The transcript must certify that at the next registration the student's grades are such that she is eligible to re-enter the college from which she is transferring. Due to * * *.

BOARD'S EXHIBIT 140

BLACK ACHIEVEMENT

[PHOTO OMITTED]

A Success Story at Ole Miss

[PHOTOS OMITTED]

At Ole Miss, Look At . . .

Who's Who, a Colonel Rebel, Honor Roll scholars, members of Omicron Delta Kappa and Mortar Board national honoraries, the Rebelettes, men and women athletes, the Hall of Fame, student government, academic organizations.

And what do you see?

Black Achievement.

In recent years, black enrollment at The University of Mississippi has increased to 7 percent of the total student body; black involvement and accumulation of honors have also risen dramatically in academic, social, and leadership areas. So, if you're looking for opportunity—Ole Miss has it.

As a black student at Ole Miss you can take advantage of all these opportunities and more . . . Student government, campus clubs and associations, Greek organizations and non-Greek activities, campus religious life, varsity

and intramural athletics are just a few of the areas in which your interests can be focused and developed.

Blacks have achieved in numerous ways at Ole Miss. In 1975, football player Ben Williams was elected by the student body as Colonel Rebel, one of the most significant honors at the University. In academic and leadership fields, blacks have been named to the Ole Miss Hall of Fame, Chancellor's and Deans' Honor Rolls, Who's Who, and to such honoraries as Omicron Delta Kappa and Mortar Board.

In 1978, Rose Jackson served as president of the Association for Women Students; in 1977 Larry Ware was chosen to head the Union Program Council, the governing body of all Ole Miss Union-sponsored activities. Others have made their marks in the Campus Senate, Judicial Council, Associated Student Body cabinet, and dormitory councils. Elsewhere, blacks play important roles in the Ole Miss Marching Band, Flag Corps, Rebelettes, Jazz Band, the Group, The Daily Mississippian (campus newspaper), campus radio station WCBH, campus Channel 12 TV, Modeling Board, and have been in the Homecoming Court and Campus Favorites.

Achievers

Here is a list of few Ole Miss black alumni who have gone on to varied successful careers throughout the state and nation.

THAD BRIDGES—Bachelor of Business Administration majoring in Banking and Finance, 1971. **Currently, he is a vice president in a Jackson, Mississippi, bank.**

DOROTHYE CHAMPMAN—Bachelor of Arts in Political Science, 1974, **She is currently assistant director of the Student Union, East Tennessee State University.**

CLEVELAND DONALD, Ph.D. – Bachelor of Arts in Political Science, 1966. **Dr. Donald is currently Director of Black Studies and Associate Professor of History at The University of Mississippi.**

CLARENCE DUBOSE – Bachelor of Science in Pharmacy, 1975. **He is owner/pharmacist of a pharmacy in Moss Point, Mississippi.**

FREDDIE EVERSON, M.D. – Bachelor of Arts majoring in Biology and Chemistry, 1974; Doctor of Medicine, 1978. **Dr. Everson is currently serving in the U.S. Air Force.**

DOROTHY HENDERSON – Master of Education, 1969. **She is an instructor in Education at The University of Mississippi.**

ROSE JACKSON – Bachelor of Arts in Education majoring in Journalism and English, 1979. **Ms. Jackson is a reporter for the Memphis Commercial Appeal.**

EDITH HICKINBOTTOM KELLY – Bachelor of Business Administration in Accountancy, 1973. **In Memphis, she is working as a Certified Public Accountant.**

JAMES MINOR – Bachelor of Arts in Political Science, 1969; Juris Doctor, 1972. **He is an Assistant Professor of Law at the University of Mississippi.**

BURNICE MORRIS – Bachelor of Arts in Journalism, 1973. **Mr. Morris works for the Dayton, Ohio Journal-Herald as a reporter.**

LARRY WARE – Bachelor of Arts in Education majoring in Social Studies, 1976; Master of Education in Guidance and Counseling, 1978. **He is a college counselor at East Arkansas Community College.**

MARK WISE – Bachelor of Science in Electrical Engineering, 1971. **He is an engineer in Jackson, Mississippi.**

PATRICIA TAYLOR WISE – Bachelor of Arts in Education majoring in Special Education (Speech

Therapy), 1973; Master of Communicative Disorders in Speech Pathology, 1976. **Ms. Wise is co-owner and consultant of an educational consulting firm in Jackson, Mississippi.**

Ole Miss, A Place to Grow

You can benefit most from an Ole Miss education because the University is known for academic excellence in the state as well as the nation. The University establishes a firm foundation for wise career selection by offering a wide variety of courses designed to introduce students to those elements which the business and industrial worlds, government, and the professions consider essential for advancement – such as English, natural sciences and social sciences. You may enroll in programs leading to careers in social work, journalism-radio-TV, pharmacy, microbiology, military service, engineering, teaching, banking, interior design, accounting, and government service, among many others.

[PHOTO OMITTED]

Black Awareness Week – a week of activity which celebrates the accomplishments of black people in America today. Through positive presentation of black people in politics, music, education, business, and entertainment, this special week of events provides a clear picture to the University community of the black students' interests and goals.

Black History Week – the biggest event sponsored by the Black Student Union and the Black Affairs Committee of the Associated Student Body. Prominent guests visit the

campus to speak on various aspects of black life in America. Past speakers include Julian Bond, Stokely Carmichael, and Benjamin Hooks. The week's events are designed to promote an appreciation of black culture.

[PHOTO OMITTED]

Alpha Kappa Alpha, Delta Sigma Theta, and Zeta Phi Beta—three black social sororities on the Ole Miss campus.

Alpha Phi Alpha, Omega Psi Phi, and Phi Beta Sigma—three black fraternities on the Ole Miss campus.

[PHOTO OMITTED]

You, too, can be an achiever at The University of Mississippi. Come to Ole Miss for the excellent career preparation and education we can give you, and for the living and growing experiences available here. We invite you to visit the University campus and see for yourself what we have to offer. We think you'll find all the challenges and opportunities that you seek in a college education. Become a part of Ole Miss. We want to see you here.

Black Activities at Ole Miss

Ole Miss is a school "where things are happening." There are many activities covering every aspect of campus life anxious to have your participation. Although black students contribute significantly to all types of programs at Ole Miss, there are several organizations geared to meet

the special needs of black students. These groups promote the heritage, culture, and lifestyle of the black race.

Black Student Union—a service, political and social organization designed to promote black interests. The BSU's purpose is to establish black awareness and to unify and maintain black identity.

Committee for Black Concerns—a committee formed by Chancellor Porter L. Fortune Jr. in 1978 to inform the University faculty and administration about the problems of black students on the Ole Miss campus.

Black Studies—an academic minor exploring black art, literature, and history. The courses concentrate on slavery, black revolutionary leaders, black leaders in America today, and the African heritage of the American Negro.

Black Student Union Choir—a fast growing part of Ole Miss, the Black Student Union Gospel Choir is composed of approximately 75 students who voluntarily devote a portion of their time each week to sing and experience fellowship together. They travel across the state as official ambassadors of the University.

Achievers

Here is a list of a few Ole Miss black alumni who have gone on to varied successful careers throughout the state and nation.

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BOARD'S EXHIBIT 141

MINORITY STUDENTS

[PHOTO OMITTED]

We're For You!

Ole Miss
THE UNIVERSITY OF MISSISSIPPI

THE UNIVERSITY

The University of Mississippi is located in the rolling hills of north-central Mississippi, adjacent to the city of Oxford, an ideal college town. Memphis, one of the South's finest metropolitan areas, is only a little more than an hour's drive away.

The University was chartered in 1844 and had its first session in 1848 with 80 students in the College of Liberal Arts. Since that time, the University has grown to approximately 9,600 students pursuing degrees in more than 100 different areas of study.

The academic schools are divided into seven separate areas: the College of Liberal Arts, the Schools of Accountancy, Business Administration, Education, Engineering and Pharmacy, and the Law Center. If you are interested in graduate work, there are the Graduate School and the School of Law in addition to the Schools of Medicine, Nursing, Dentistry, and Health Related Professions at the Medical Center campus in Jackson.

Special support programs at Ole Miss include Honors as well as free tutorial programs, the student counseling center and a cooperative education program that alternates work and study time periods. Newly implemented

mentor programs ensure an easy transition into University life and provide ongoing support for those students who need extra help.

STUDENT AFFAIRS

Pre-Admissions

The Pre-Admissions Office serves as the primary information center for high school and junior college prospective students. Information related to admissions, housing, financial aid and scholarships, along with information on various academic and social programs, is available in this office. Tours of the campus for prospective students are given daily, Monday through Saturday. (Mon.-Fri. 8:15-4:45; Sat. 9-12)

Office of Pre-Admissions
Room 119, Lyceum Building
The University of Mississippi
University, MS 38677
Telephone: 800-222-5102 (in Mississippi)
(601) 232-7378 (out-of-state)

Admissions

Requirements to be instituted for the Fall Semester 1986:

A. Minimum ACT score of 15 or 720 SAT (Mississippi students **must** take the ACT.)

B. High School Units Required

Subject	Units
English	4 – All must have substantial writing components.
Mathematics	3 – Algebra I*, Geometry, Algebra II or above

Subject	Units
Sciences**	3 – Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, Advanced Physics. (One unit must be laboratory based.)
Social Sciences	2½ – Must include U.S. History and American Government.
Required Electives	1 – Choose from a foreign language or mathematics (above Algebra II) or a science course from those listed above.

* Algebra I taken prior to the 9th grade fulfills the Algebra I requirement but does not negate the need for three units of math in grades 9-12.

** Neither "General Science" nor "Physical Science" is acceptable to meet the science requirement.

A Composite ACT score of 24 or SAT score of 1000 exempts students from the specific high school unit requirements.

Students who have no more than one deficiency may be admitted if the appropriate sub-test score on the ACT is at least 18.

Office of Pre-Admissions (see above)

[PHOTO OMITTED]

Academic Advising

Academic advising is a continuous process by which students are assisted in choosing a major, in selecting appropriate courses, in evaluating progress and in meeting degree program requirements.

At Ole Miss, each School or College has an advising coordinator. Dr. Jean Jones in the Department of Student Development (203 Lyceum) coordinates the overall advising system. Some schools have a centralized system (a few people do all the advising), and others have a decentralized system (each student is assigned a faculty member in his/her degree specialty). A centralized system is offered in the Schools of Accountancy and Business Administration and for freshmen in the School of Pharmacy. A decentralized system is offered in the College of Liberal Arts, the Schools of Education and Engineering, for students beyond the freshman level in the School of Pharmacy and for students in the Court Reporting Program in the Law Center.

Transferring to Ole Miss

A student transferring to the University from a regionally accredited institution of higher learning may be admitted in good standing if four basic requirements are met. To qualify you should:

1. submit an official transcript from each college previously attended.
2. have an overall grade point average of at least 2.0 on a 4.0 scale on all course work attempted.
3. be eligible to return to the last college attended.
4. show proof of an American College Test (ACT) composite score of 15 or Scholastic Aptitude Test (SAT) of 720 earned before your first college enrollment *if the following course requirements have not been met:*

6 semester hours of English Composition,
3 semester hours of College Algebra or above,
6 semester hours of Laboratory Science,
9 semester hours of Transferable Electives.

Official score reports from the testing services or scores recorded in official high school or college transcripts are acceptable.

Undecided Majors

If you haven't chosen a major, you can declare yourself an "undecided major" in the College of Liberal Arts, or you can ask your adviser to help plan a program flexible enough for change. A number of students each year declare themselves "undecided," and changing majors is easy to do, particularly in your first couple of years at the University. To change your major, go to the Office of the Dean or to the Advising Coordinator in the School to which you would like to change.

Additionally, the Department of Student Development provides career counseling, and an elective course, Career and Life Planning, is also offered.

Department of Student Development
Room 203, Lyceum Building
University, MS 38677

Student Activities

The Office of Student Activities exists for your benefit. The assistant dean of students is ready to help with any special problems that you may encounter when you make the transition from home to college. Our purpose in this office is to provide you with direction and information that will ease this transition period. Remember, we are here to assist you, and because of you, we are here.

Office of Student Activities
Room 200, Lyceum Building
University, MS 38677

[PHOTO OMITTED]

Counseling

Three innovative programs, designed to help students ease into their new environment, have been developed in the last few years. These are MENTOR, VIP and SMILE.

MENTOR (Maintaining Excellence by Nurturing Toward Opportunities for Retention) is targeted toward assisting minority students in adjusting to the college campus. University faculty members serve as special mentors to develop rapport and friendship with the students.

VIP (Mentoring for VIP students) was started to recruit academically superior students and to provide spe ial stimulation for them through their relationship with faculty mentors who challenge these gifted students to reach their maximum potential through studies and outside exploration.

SMILE (Students Motivating the Inter-Communicative Learning Environment) sets up a counseling network for minority students or those students with grade point averages under 2.0 with a goal of retention of currently enrolled students. It is an effort to make ali students feel welcome at the Univesity and to feel a part of the Ole Miss experience.

Division of Student Affairs
Room 200, Lyceum Building
University, MS 38677

Learning Development Center (LDC)

Any Ole Miss student who could benefit from free tutoring in basic skills such as reading, writing, mathematics, studying or English as a second language may be helped by the Learning Development Center. Usually a student seeking help will be tutored by graduate assistants, although other undergraduate students and faculty members are available at certain times on a voluntary basis. The center is especially helpful for those students enrolled in developmental studies at the University.

The LDC has been serving students since the fall of 1976 and is open Monday through Friday from 9 a.m. - 4 p.m. and evenings from 6 p.m. to 10 p.m. The center is located on the lower level of the John Davis Williams Library in the Reserve Room area.

Learning Development Center
110 John Davis Williams Library
University, MS 38677

Pre-College Conference

Throughout the summer Ole Miss conducts a series of pre-registration conferences so that you can meet with counselors and advisers who will answer your questions about career choices, majors, courses and credits. In fact, your counselor or adviser will help you select the course of study which best suits your aptitudes and career interests. You will be able to take aptitude tests and the ACT if you haven't already done so, and to pre-register so you won't have to worry about classes filling up in the fall. There are

several conferences throughout the summer, and you can pick the one that best fits into your schedule.

Department of Student Development
Room 203, Lyceum Building
University, MS 38677

Career Services and Placement

The University of Mississippi's Career Services and Placement Office helps students and alumni in the areas of career exploration, career assessment, summer employment and professional employment upon graduation.

The office coordinates an extensive on-campus interview program, bringing together those who register with representatives from business, industry, government agencies and educational institutions. In addition, the office maintains and refers registrants' credentials to prospective employers; compiles and distributes job announcement bulletins; conducts career planning classes, workshops and job search seminars; maintains a career information center; and serves as a cosponsor of the annual minority career seminar.

Students are encouraged to familiarize themselves with and to use Career Services and Placement early in their college years, ideally, long before the graduation semester.

Career Services and Placement
Room 303, Lyceum Building
University, MS 38677

Afro-American Studies Program

Afro-American Studies coordinates the academic focus on the Black experience at the University. The program offers

introductory courses, advanced courses in history (e.g., the Black Experience in Mississippi), cultural studies (e.g., Richard Wright, art) and social/behavioral studies (e.g., Black Politics). Courses meet the new University core requirement, serve as electives in several majors and can lead to a minor in Afro-American Studies. These courses are valuable for self-awareness, cross-cultural understanding and career advancement. Research seminars, films, speakers, art exhibits and trips to scholarly research conferences are sponsored by the program. The major research project focuses on The Black Experience in Mississippi and the migration of Mississippians to northern cities such as Chicago.

Afro-American Studies Program
303 Barr Hall
University, MS 38677
(601) 232-5977

[PHOTO OMITTED]

The Center for the Study of Southern Culture

The Center for the Study of Southern Culture is a pioneering model for the nation's regional study programs. It brings together a broad panorama of cultural experiences in an academic environment. Projects include the Encyclopedia of Southern Culture, films, records, publications, the international *Living Blues* magazine and newsletter, and the Jimmie Rodgers Memorial Association. For further information:

Southern Studies Program
Center for the Study of Southern Culture
The University of Mississippi

University, MS 38677
Telephone: (601) 232-5993

FINANCIAL AID

More than 50 percent of Ole Miss students receive financial aid from federal, state or University sources in the form of loans, grants, scholarships and employment. Currently, Ole Miss participates in the following federally funded financial aid plans: Pell Grants, National Direct Student Loans, Guaranteed Student Loans, Work Study and Health Professions Student Loans.

If you plan to apply for financial aid at Ole Miss, there are three steps to follow to make sure you're eligible.

1. Apply for admission to the University. (Forms are available from your high school counselor or from the Ole Miss Office of Admissions. The University of Mississippi, University, MS 38677.)
2. Complete a Financial Aid Form (FAF) by March 1 and mail to the College Scholarship Service, P.O. Box 2700, Princeton, NJ 08541. The University of Mississippi CSS code is 1840. (The FAF is required of all students seeking awards when financial need is a factor. Even students seeking University merit scholarships are encouraged to file an FAF since many scholarships weigh financial need before being awarded.)
3. File a University Application for Financial Aid by April 1.

A brochure, *Financial Aid at Ole Miss*, listing loans, grants, scholarships and forms of employment, is available from the Financial Aid Office, The University of Mississippi, University, MS 38677.

Remember: The March 1 and April 1 dates are important since all awards are made on the basis of the filing of timely applications and forms.

HOUSING

Residence hall life is an enriching part of campus living. It provides chances to build close friendships. The residence halls at the University contain lounges, laundry facilities and kitchens. The rooms have essential furniture and are planned for two students per room. Local television service and TV cable hookups are included in the basic residence hall fee.

Single students who have completed fewer than 27 semester hours are required to sign a reduced rate housing contract for the academic year, and must live on campus except in the following cases:

1. when there are substantial medical reasons for not doing so.
2. when living with parent or legal guardian.

[PHOTO OMITTED]

Students with fewer than 27 hours will be required to live in freshman halls. (See back of housing application for hall designations.)

After receiving a completed application and $50 deposit, the Department of Housing and Residence Life will forward to the applicant a housing contract. Students who have earned more than 27 semester hours have the choice of signing either a reduced rate academic year contract for housing and meals or standard semester contracts for housing and/or meals. Assignments for the fall semester are generally made in early May.

FOOD SERVICES

University Food Services offers a variety of options to fit the nutritional needs of Ole Miss students. For those interested in the convenience of 21 meals per week on campus, there is the Meal Plan, at a cost of $625 per semester. Diner's Express is a unique food payment plan, which works on a declining balance system similar to a credit card system in reverse. You deposit money into an account, and each of your purchases is automatically charged against that account. Under either method, Meal Plan or Diner's Express, students are able to dine in all Food Service locations on campus.

OPPORTUNITIES FOR SUCCESS

There are many Ole Miss Black Alumni who have proved that Ole Miss does provide opportunities that last a lifetime and who are enjoying successful careers in the state and throughout the nation. Their areas of expertise cover a variety of career possibilities – as pharmacists, attorneys, consultants in a number of fields, certified public accountants, journalists, professional athletes, government employees and appointees, judges, product researchers, teachers, hospital administrators, engineers, computer specialists and medical professionals among others. The Career Alumni Network assists Ole Miss graduates even before graduation in making contacts with alumni in similar fields of interest and in getting a jump on the job market. A few examples are:

[PHOTO OMITTED]

Reuben Vincent Anderson – Juris Doctor. He is Mississippi's first Black State Supreme Court Justice.

Harold Blakely – Bachelor of Science in Pharmacy. He is director of pharmacy at the Delta Medical Center in Greenville, MS.

Thad Bridges – Bachelor of Business Administration. He is executive manager of the Mississippi Family Health Center in Jackson, MS.

Danny Covington – Bachelor of Arts; Masters in Criminal Justice. He is currently serving as district manager for Congressman Webb Franklin in the 2nd District in Mississippi.

Rose Jackson Flenorl – Bachelor of Arts in Journalism. She is currently a systems engineer with IBM Corporation in Memphis, TN.

Syria Sturdivant Grady – Bachelor of Arts; Juris Doctor. She is an attorney in Meridian, MS.

Jerry Michael Harris – Bachelor of Science in Electrical Engineering. Dr. Harris is conducting product research for Exxon in Houston, TX.

William Jordan – Juris Doctor. He is senior staff attorney with Litton Industries in Pascagoula, MS.

Edith Hickenbotton Kelly – Bachelor of Business Administration in Accountancy. She is a certified public accountant (C.P.A.) in Memphis, TN.

Leonard Morris – Bachelor of Arts in Education. He is coordinator of Federal-State Programs and Realtors in Batesville, MS.

Otis Sandford – Bachelor of Journalism. He is currently serving as a reporter for *The Commercial Appeal* in Memphis, TN.

Jerald Ulmer – Bachelor of Public Administration in Urban Administration; Master of Health Care Administration. He is a hospital administrator with the U.S. Navy.

Earnest Watson – Bachelor of Accountancy. He is currently serving as warranty administrator for General Electric Company in Cincinnati, OH.

Patricia Wise – Bachelor of Arts in Education; Juris Doctor. She is an attorney with Dockins and Wise Law Firm in Jackson, MS.

STUDENT ORGANIZATIONS

Student organizations are the extras of college life and provide opportunities to expand your interests or to enjoy the company of people with similar interests. At Ole Miss you may choose from more than 150 organizations – recognition, professional, special interest and social groups. In addition, *The Daily Mississippian*, student government, the *Ole Miss* annual, and a variety of student committees provide outlets for professional and personal growth.

Black Student Union

The Black Student Union is a service, political and social organization designed to promote Black interests. The BSU's goal is to establish Black awareness and to unify and maintain Black identity. Membership is automatic.

Elections for BSU officers occur in the spring. The BSU is governed by an executive board selected by BSU members. Cultural events are sponsored to give students social and cultural enrichment at Ole Miss.

The month of February is Black History Month and is full of events for the University community. There are nationally known speakers, movies and educational seminars. Also, the BSU sponsors talent shows and discussions throughout the year.

Another element is the Black Student Union Gospel Choir which is a growing part of Ole Miss. It is comprised of approximately 75 students who voluntarily devote a portion

of their time each week to sing and experience fellowship together. They travel across the state as official ambassadors of the University.

[PHOTO OMITTED]

Black Campus Ministry

The Black Campus Ministry is an organization offering a program of international spiritual development for students. Religious activities are designed to provide a linkage between community churches and University students. All students are encouraged to participate in monthly programs. The campus minister is available for counseling on Thursday at 5 p.m. in the Old Chapel 317 and at other times by appointment. Second Baptist Church on Jackson Avenue has Worship Service at 11 a.m. and Training Union at 5 p.m. on Sunday and Bible Study at 7:30 p.m. on Wednesday. For more information, contact Reverend Leroy Wadlington, campus minister, 234-7868.

Society of Black Engineering Students (SBES)

Membership in SBES is open to all University students dedicated to promoting the advancement and academic development of Black students enrolled in engineering and computer science. The society of Black Engineering Students is a chartered member of the National Society of Black Engineers.

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National Association for the Advancement of Colored People (NAACP)

The purpose of the NAACP on the Ole Miss campus is to enhance the educational opportunities of students enrolled at Ole Miss.

GREEK ORGANIZATIONS

Each Black Greek organization has individual purposes, but they all share at least one common goal – promoting unity among Black college students. Black fraternities and sororities also share the responsibility of promoting leadership, scholarship and community service.

Represented on the Ole Miss campus are: Alpha Kappa Alpha, Delta Sigma Theta and Zeta Phi Beta sororities. Fraternities are: Alpha Phi Alpha, Kappa Alpha Psi, Omega Psi Phi and Phi Beta Sigma.

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1906. In the spring of 1978, the University of Mississippi welcomed Alpha Phi Alpha to its campus. Proudly wearing the colors black and gold, its members have proved themselves active in all phases of campus life.

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Founded January 5, 1911, at the University of Indiana, Kappa Alpha Psi is the newest fraternity on campus, established in September of 1982. Kappa men have involved themselves in many campus and community activities. They are especially proud of the number of members associated with the Rebel athletic programs.

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The Eta Zeta Chapter of Omega Psi Phi is a fraternity boasting men involved in all aspects of The University of Mississippi. In community activities and in campus life, in athletics and organizations, the Omega Psi Phis are there exemplifying ideals of leadership and brotherhood.

Phi Beta Sigma

Phi Beta Sigma, the social fraternity known for serving humanity, was founded January 9, 1914, at Howard University, and made its way to Ole Miss in the spring of 1975. In any facet of campus life, a Phi Beta Sigma can be depended on for duty.

ATHLETICS

Black student athletes have played a major role in Ole Miss sports. Sporting events are always a part of the excitement at the University.

[PHOTO OMITTED]

[PHOTO OMITTED]

CULTURAL INSIGHTS

Various programs are sponsored or cosponsored by the BSU, including a Speaker's Forum. In the past, a number of nationally known Black leaders have appeared on the Ole Miss campus including:

Dr. Emmit Burns, local and national civil rights activist
Charles Evers, former mayor of Fayette, Mississippi
Ismail Jamal, founder and director of the Institute of Self-Healing
James Meredith, civil rights activist
Haki Madhubute (formerly Don Lee), poet, writer, publisher and community activist
Dr. Conrad Worrill of Chicago, Illinois, who discussed "The Black Liberation Movement and Implications for Organizing in the 80s"
Dr. Margaret Walker Alexander, distinguished novelist and educator who was the keynote speaker during the 20th Anniversary program of the Admission of Black Students to the University.
Yvonne Braithwaite-Burke, attorney-at-law and former member of United States Congress.
Wendell Gunn, assistant director for commerce and trade in the Office of Policy Development in the Reagan Administration
Alex Haley, author, historian and lecturer who is world renowned for *Roots*
Constance Baker Motley, chief judge, United States District Court, Southern District of New York
A. Leon Higginbotham Jr., judge, United States Circuit Court of Appeals for the Third Circuit
Alan Page, attorney and former Chicago Bears star

Leontyne Price, internationally acclaimed operatic superstar who became the University's first honorary alumna during the centennial observance of the admission of women to Ole Miss

FACULTY AND STAFF

There are a number of Black faculty and staff members at the University, all of whom are willing to help you with any special problems that may arise. We're sure you'll find all the faculty and staff willing to advise and counsel you on academic matters and to provide support when you need it.

WE'RE FOR YOU!

Black students play a vital role in making the University what it is by being involved in every aspect of student life, whether chairing student committees such as the RHA Judicial Council or the Minority Concerns Committee, being active in intramural or intercollegiate athletics, marching with the "Pride of the South," serving as ambassadors or hosts to campus guests, participating in the Miss Ebony Pageant or running for Homecoming queen.

A LEGACY OF ACHIEVEMENT

Academic excellence has been the foremost pursuit of The University of Mississippi for more than 130 years—an ideal that has remained fresh and vibrant and as ever-changing as the generations of graduates who know us affectionately as Ole Miss.

Most importantly, the University has achieved true international stature for its blending of scholarship and research, public service, and athletic success. Ours is the proud history of a pioneer, but it serves only as prologue to our vision of a greater future.

VISION FOR TOMORROW

The Afro-American Studies Program at the University is one of only three such programs in the state. It is the only program at a comprehensive university in Mississippi.

The University ranks first in Mississippi, 5th among all public universities and 21st among all U.S. colleges and universities in the production of Rhodes Scholars. Ole Miss has had 22 students chosen for the honor; there are 24 among University alumni.

The School of Accountancy is one of the few administered separately at an American university. Fully accredited, it produces graduates finely tuned to modern business and its technology. It offers the only full accredited graduate program in Mississippi.

Mississippi's only schools for Pharmacy, Medicine, Dentistry, and Health Related Professions are at Ole Miss.

Engineering research on Mississippi's plentiful lignite coal deposits are geared to find efficient ways to use it in energy production. Projects involve gasification and fluidized bed combustion.

The Sarah Isom Center for Women's Studies and its curriculum of study were the first such academic programs to be established in Mississippi and continue to set the pace for scholarship.

Chemistry professors are making new inroads in building organic molecules which herald a new era in electronic circuitry.

The University's debate team consistently ranks among the nation's best.

The world-wide Faulkner and Yoknapatawpha Conference attracts scholars of the Nobel Prize-winning author from throughout the world.

We have told you and shown you about some of the happenings at The University of Mississippi. We sincerely hope that you decide to continue your formal education at Ole Miss. We are prepared to tell you more about why we think Ole Miss is for you and how we can provide you with tremendous opportunities that last a lifetime.

[PHOTO OMITTED]

SHAPING UP THE STATE

There are six regional counselors for the University. Their job is to spread the word about Ole Miss across the state. The six counselors are placed in special districts across Mississippi. Find your area and then locate the person assigned to you. When you want to know more about The University of Mississippi, contact your designated counselor. She's nearby and ready to help.

Out-of-state students can obtain information about the University by writing or calling the Office of Pre-Admissions, University, MS 38677; (601) 232-7378.

Brenda Jones—her territory includes the whole state. She specializes in minority recruitment and is based on the Oxford campus. You may write Ms. Jones through the University's Office of Pre-Admissions, University, MS 38677; telephone (601) 232-7378 or toll free at 1-800-222-5102.

Susan Jones—of Jackson, serves the state's Central region, from Madison to Amite County (including Jackson). Students in this region may write Ms. Jones at 2064 Brecon Drive, Jackson, MS 39211.

Robin Street—of Oxford, serves North Mississippi including her home county of Lafayette, the area from DeSoto to Monroe County as well as Memphis. Contact Ms. Street through the University's Office of Pre-Admissions, University, MS 38677; telephone (601) 232-7378 or toll free at 1-800-222-5102.

Janie Guice—of Biloxi, serves the state's Coastal region, which includes counties from Pike to Jackson County. Students on the coast can reach Ms. Guice at P.O. Box 6382, Biloxi, MS 39532, telephone (601) 392-6479.

Jane Tannehill—of Union, serves the state's East-Central region including her home county, Newton, and from Choctaw to Clarke counties. She can be reached at P.O. Box 87, Union, MS 39365, telephone (601) 774-9570.

Lisa Williamson—of Greenville, serves the Delta area, from Tunica to Warren County. Students in the Delta may reach Ms. Williamson at 1617 East David Circle, Greenville, MS 38701; telephone (601) 332-2399.

The University of Mississippi
Office of Admissions and Records
University, Mississippi 38677
(601) 232-7226 or
Toll free in Mississippi: 1-800-222-5102

A LEGACY OF ACHIEVEMENT WITH VISION FOR TOMORROW

The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against

anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

[APPLICATION FORM OMITTED]

BOARD'S EXHIBIT 142

OLE MISS

The University of Mississippi

Share
the
Excitement
Share
the
Success

The
Black
Experience
at Ole Miss

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We're
Serious
About
Your Education

Introduction

Welcome to The University of Mississippi. This brochure, a preview of the activities and people at Ole Miss, has been designed especially for you as you prepare for your college years. As you embark on a totally new and exciting way of life, you will become acquainted with new and different people, experience varied educational programs, and become caught up in something unique.

A recent poll of Black students at Ole Miss showed that nearly 95 percent said they chose Ole Miss because of its strong academic reputation. There is, students say, an air of excitement surrounding academics at the University. Educational programs are often tailored to fit the needs of students, and there is a close relationship between faculty and students. More than 70 percent of the Ole Miss faculty hold doctoral or other terminal degrees, and that percentage is even higher in certain academic areas.

The academic schools are divided into six separate areas: the College of Liberal Arts, the Schools of Accountancy, Business Administration, Education, Engineering and Pharmacy. If you are interested in graduate work, there are the Graduate School and the School of Law, and, in Jackson, the Schools of Medicine, Nursing, Health Related Professions, and Dentistry.

Special support programs at Ole Miss include Honors as well as free tutorial programs, the student counseling center and a cooperative education program that alternates work and study time periods.

You deserve the best. We are anxious to see your name placed on a growing list of Black Ole Miss graduates who are happy with their education, who have found a degree from Ole Miss makes a difference, and who have careers to prove it.

Ole Miss in General

The University of Mississippi is located on 1,945 beautiful acres in the north-central section of the state adjacent to the city of Oxford, an ideal college town. Memphis, one of the South's finest metropolitan areas, is only a little more than an hour's drive away.

The University was chartered in 1844 and had its first session in 1848 with 80 students in the College of Liberal Arts. Since that time, the University has grown to 9,600 students pursuing degrees in more than 120 different areas.

We Are Ole Miss!

Black students at Ole Miss are involved in the total educational experience. They contribute significantly to the new Ole Miss. You'll find individuals participating in academic honoraries, social organizations, athletics, religious groups, special interest clubs, and much more. All of these groups help to promote the heritage, culture and black experiences of proud Ole Miss students.

Offices

Office of Student Activities

The Office of Student Activities exists for your benefit. The assistant director of student activities for minority affairs stands ready to help with any special problems that you may encounter when you make the transition from home to college. Our purpose in this office is to provide you with direction and information that will ease this transition period. Every student needs help at one time or another with personal, academic or financial aid prob-

lems. We won't pretend to have all the answers, but we pledge to put you in contact with someone who does.

Remember, we are here to assist you, and because of you, we are here. For additional information, write:

Office of Student Activities
Room 200, Lyceum Building
University, MS 38677

Pre-Admissions

The Pre-Admissions Office serves as the primary information center for high school and college prospective students. Information related to admissions, housing, financial aid and scholarships, along with information on various academic and social programs, is available in this office. Tours of the campus for prospective students are given daily, Monday through Saturday. If you as a Black student need special assistance in these areas, please contact this office:

Pre-Admissions
Room 119, Lyceum Building

Pre-College Conference

Throughout Mississippi and the South it's well known that Ole Miss is "serious about your education." That's the reason the University developed a summer program pre-registration—to allow you to prepare the ground so that you can proceed to the business of being serious about your education from the very first day. This is not to say you won't find life at Ole Miss exciting and fun when fall classes begin. You will. There will be time to renew old friendships and to begin new ones, time to enjoy sports, entertainment and social activities. At Ole Miss you'll find a balance of academics and zestful living made even more meaningful by participation in the summer pre-

registration program designed especially for you. During a Pre-College Conference on the Oxford campus, you'll meet with counselors and advisers who'll answer your questions about career choices, majors, courses, credits. In fact, your counselor or adviser will help you select the course of study which best suits your aptitudes and career interests.

For additional information call:
Department of Student Development
Room 203, Lyceum Building
University of Mississippi
University, MS 38677

Admission

To qualify for admission to Ole Miss, Mississippi students should have a composite score on the American College Test (ACT) of 15 or higher. Out-of-state students may take the Scholastic Aptitude Test (SAT); minimum SAT score requirement is 720.

For more information contact:
Office of Pre-Admissions
Room 119, Lyceum Building
The University of Mississippi
University, MS 38677

Academic Advising

Academic advising is a continuous process by which students are assisted in choosing a major, in selecting appropriate courses, in evaluating progress and in meeting degree program requirements.

At Ole Miss, each School or College has an advising coordinator. Dr. Jean Jones in the Department of Student Development (203 Lyceum) coordinates the overall advisory system. Some Schools have a centralized system (few people do all the advising) and others have a centralized system (each student is assigned a faculty member in his/her degree specialty). A centralized advising system is offered in the Schools of Accountancy and Business Administration and for freshmen in the School of Pharmacy. A decentralized system is offered in the College of Liberal Arts, the Schools of Education and Engineering and for students beyond the freshman level in the School of Pharmacy.

Undecided Majors

If you haven't chosen a major, don't worry. Declare yourself an "undecided major" in the College of Liberal Arts OR ask your adviser to help plan a program flexible enough to allow for change. Additjonally, the Department of Student Development provides career counseling. An elective course, Career and Life Planning, is also offered.

Changing Majors

Changing majors is easy to do. Many students change majors before finding the area that is best for them. To change your major, go to the Office of the Dean or to the Advising Coordinator in the School to which you would like to change. For additional information contact:

Department of Student Development
Room 203, Lyceum Building
University, MS 38677

Career Services and Placement

The University of Mississippi's Career Services and Placement is an office that helps students and alumni in the areas of career exploration, career assessment, summer employment and professional employment upon graduation.

Career Services and Placement coordinates an extensive on-campus interview program, bringing together those who register with representatives from business, industry, government agencies and educational institutions.

In addition, the office maintains and refers registrants' credentials to prospective employers; compiles and distributes job announcement bulletins; conducts career planning classes, workshops and job search seminars; maintains a career information center; and serves as a cosponsor of the annual minority career seminar.

Students are urged to familiarize themselves with and to use Career Services and Placement early in their college years, ideally long before the graduation semester.

For additional information contact:
Career Services and Placement
Room 303, Lyceum Building
University, MS 38677

Learning Development Center (LDC)

Any Ole Miss student who could benefit from free tutoring in basic skills such as reading, writing, mathematics, studying or English as a second language may be helped by the Learning Development Center (LDC). Usually a student seeking help will be tutored by graduate assistants, although other undergraduate students and faculty members are available at certain times on a voluntary

basis. The Center is especially helpful for those students enrolled in developmental studies at the University.

The Learning Development Center has been serving students since the fall of 1976. The Center is open Monday through Friday from 9 a.m. to 4 p.m. and evenings from 6 p.m. to 10 p.m. The LDC is located on the lower level of the John D. Williams Library in the Reserve Room area.

For additional information contact:
Learning Development Center
The University of Mississippi
University, MS 38677

Afro-American Studies Program

At Ole Miss Afro-American Studies is a growing endeavor. We hope you will join in the excitement created by the interdisciplinary focus we bring to the University since our future and your future will be much brighter when you do. The Afro-American Studies program contributes to the intellectual life on campus by sponsoring cultural events and forums with nationally recognized speakers. In addition to a major program celebrating the birthday of Dr. Martin Luther King Jr., Afro-American Studies promotes National Civil Rights Day in November. Symposia on Black Images in the American Media, and Student-Faculty Relations have been conducted as well.

For further information:
Afro-American Studies Program
The University of Mississippi
University, MS 38677

Financial Aid

More than 50 percent of Ole Miss students receive financial aid from federal, state or University sources in the

form of loans, grants, scholarships and employment. Currently, Ole Miss participates in the following federally funded financial aid plans: Pell Grants (formerly known as BEOG), National Direct Student Loans, Guaranteed Student Loans, Work-Study, and Health Professions Student Loans.

If you plan to apply for financial aid at Ole Miss – loan, grant, scholarship or employment – there are three steps to follow to make sure you're eligible.

1. Apply for admission to the University. (Forms are available from your high school counselor or from the Ole Miss Office of Admissions, The University of Mississippi, University, MS 38677.)
2. Complete a Financial Aid Form (FAF) *by March 1* and mail to College Scholarship Service, P.O. Box 2700, Princeton, NJ 08541. The University of Mississippi CSS code is 1840. (The FAF is required of all students seeking awards when financial need is a factor. Even students seeking University merit scholarships are encouraged to file an FAF since many scholarships weigh financial need before being awarded.)
3. File a University Application for Financial Aid *by April 1*.

A brochure, *Financial Aid at Ole Miss*, listing loans, grants, scholarships and forms of employment offered at Ole Miss, is available from the Financial Aid Office, The University of Mississippi, University, MS 38677.

Remember: The *March 1* and *April 1* dates are important since all awards are made on the basis of the filing of timely applications and forms.

Housing

Student housing includes residence halls (eight for men and 13 for women), married student apartments and mobile home park. Residence hall rooms provide each occupant with a single bed, desk, lamp, closet and drawer space. Each room has a telephone and a hookup for cable television. Students supply their own linen, pillows and personal items. Bathrooms are located conveniently on each floor. The Student Housing Office has room and window sizes for each residence hall and for campus apartments. There is also considerable off-campus housing.

Details about campus housing—rules and regulations, room assignments, refrigerators, air conditioning—are contained in the booklet *Living on Campus at Ole Miss*, which is available from Student Housing, The University of Mississippi, University, MS 38677.

To reserve campus housing, you should:

1. Complete and return an Application for Student Housing (available from Student Housing, The University of Mississippi, University, MS 38677; the Office of Admissions; or from the back of the admissions booklet *We're Serious About Your Education),*
2. Submit a deposit of $50 with your application.

FOOD SERVICES

The Ole Miss Meal Plan offers students four meal plan options, all of which begin on the first day of registration and continue through the last day of examinations.

Plan	Meals Available	Cost Per Meal	Semester Cost
21 meals/week (7 days)	357	$1.67	$595.00
14 meals/week (7 days)	238	2.39	$570.00
15 meals/week (M-F)	255	2.12	$540.00
10 meals/week (M-F)	170	3.03	$515.00
5 meals/week (M-F)	85	3.64	$310.00

To make mealtime more versatile and convenient for your schedule, the Ole Miss Meal Plan does not limit students to eating only at the Cafeteria. Meal plan cards are also honored at the Union Cafeteria, the Union Grill and the Alumni House Snack Bar.

ACHIEVERS

Here are only a few of the many Ole Miss Black alumni enjoying successful careers in the state and throughout the nation.

REUBEN VINCENT ANDERSON—Juris Doctor, 1967. He is a circuit court judge in Hinds County and formerly served as County Court judge.

JERRY MICHAEL HARRIS, Ph.D.—Bachelor of Science in Electrical Engineering, 1973. Dr. Harris is conducting product research for Exxon in Houston, Texas.

WILLIAM JORDAN—Juris Doctor, 1972. He is senior staff attorney with Litton Industries in Pascagoula, MS.

GARY A. McGAHA, Ph.D.—Doctor of Philosophy in Political Science, 1976. Dr. McGaha is assistant to the president of Kentucky State University at Frankfort.

EDITH HICKINBOTTOM KELLY – Bachelor of Business Administration in Accountancy, 1973. She is a Certified Public Accountant (C.P.A.) in Memphis, TN.

BURNIS MORRIS – Bachelor of Arts in Journalism, 1973. Mr. Morris is city editor of the Atlanta (Ga.) *Constitution*.

CONSTANCE SLAUGHTER-HARVEY – Juris Doctor, 1970. She was appointed by Gov. William Winter as Director of the Department of Human Development for the State of Mississippi.

JERALD ULMER – Bachelor of Public Administration in Urban Administration; Master of Health Care Administration in Health Administration, 1975. He is a hospital administrator with the U.S. Navy.

LARRY WEEDEN – Bachelor of Arts in Journalism, 1972; Juris Doctor, 1975. He is an Assistant Professor of Law at North Carolina Central University in Durham.

ORGANIZATIONS

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Black American Law Student Association

The Black American Law Student Association (BALSA) acquaints law students with professional problems and responsibilities. The goals of BALSA are to articulate and promote the professional needs and goals of Black American law students, foster and encourage professional competence, focus upon the relationships of Black lawyers to the American legal structure, instill in the Black attorney and law student a greater awareness and commitment to the needs of the Black community to bring about meaningful change to meet the needs of the Black

Community. BALSA has workshops each year to disseminate valuable legal information that is beneficial.

[PHOTO OMITTED]

Freemasons

Foster-Murry Lodge No. 711 and Vinson's Jewels Court No. 711 are present at Ole Miss to provide students with fellowship and spiritual guidance and also to display the beautiful principles of Freemasonry to those who are interested. Their service projects include fall voter registration drive, participation in the American Cancer Society and the Red Cross blood drives.

[PHOTO OMITTED]

Society of Black Engineering Students (SBES)

Membership in SBES is open to all University students dedicated to promoting the advancement and academic development of Black students enrolled in Engineering and Computer Science. The society of Black Engineering Students is a chartered member of the National Society of Black Engineers.

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Delta Sigma Theta

Delta Sigma Theta is a Greek-letter society having over 100,000 members. There are 700 chapters grouped into seven regions according to their geographic area. They are located in 45 states, the District of Columbia, the Virgin

Islands and the Republic of Haiti in the Caribbean and in Liberia, West Africa, Delta was founded at Howard University in Washington, D.C., on January 13, 1913, by a group of 22 undergraduate women who, on February 18, 1913, secured a Certificate of incorporation for the infant sorority. The stated purpose of the founders was to establish a society to promote high cultural, intellectual and moral standards among its members, for its own benefit and for that of the larger society in which it existed.

[PHOTO OMITTED]

Zeta Phi Beta

Zeta Phi Beta was organized at Howard University on January 16, 1920. It was the idea of the founders that the sorority would reach college women in all parts of the country who were sorority-minded and who desired to follow up the ideals of finer womanhood, scholarship, sisterly love and community service. The Zetas choose intelligent women who have high scholastic achievement and who desire to follow the ideals of the sorority. Although they are a group of women involved in many activities, the women of Zeta Phi Beta assert that their purposes are to give help to the needy and aid to the retarded.

[PHOTO OMITTED]

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Phi Beta Sigma

Phi Beta Sigma, the social fraternity known for serving humanity, was founded January 9, 1914, at Howard University, and made its way to Ole Miss in the spring of 1975.

The frat promoting the colors of true blue and pure white was the intramural champion in basketball. In any facet of campus life, a Phi Beta Sigma can be depended on for duty.

[PHOTO OMITTED]

CULTURAL INSIGHTS

Various programs are sponsored or cosponsored by the BSU, including a Speaker's Forum. In the past, a number of nationally known Black leaders have appeared on the Ole Miss campus. In addition to the ones pictured here, there are a number of others including:

DR. EMMIT BURNS, local and national civil rights activist

CHARLES EVERS, former mayor of Fayette, Mississippi

ISMAIL JAMAL, founder and director of the Institute of Self-Healing

JAMES MEREDITH, civil rights activist

HAKI MADHUBUTE (formerly Don Lee), poet, writer, publisher and community activist

DR. CONRAD WORRILL of Chicago, Illinois, who discussed "The Black Liberation Movement and Implications for Organizing in the 80s."

[PHOTO OMITTED]

DR. MARGARET WALKER ALEXANDER, distinguished novelist and educator, who was the keynote speaker during the 20th Anniversary program of the Admission of Black Students to the University.

[PHOTO OMITTED]

YVONNE BRAITHWAITE-BURKE, Attorney-at-law, Los Angeles, California. Former Member of United States Congress.

[PHOTO OMITTED]

WENDELL GUNN, Assistant Director for Commerce and Trade in the Office of Policy Development in the Reagan Administration.

[PHOTO OMITTED]

ALEX HALEY, Author, Historian, and Lecturer. World renowned for his book, *Roots*.

[PHOTO OMITTED]

A. LEON HIGGINBOTHAM, JR., Judge, United States Circuit Court of Appeals for the Third Circuit.

[PHOTO OMITTED]

CONSTANCE BAKER MOTLEY, Chief Judge, United States District Court, Southern District of New York.

[PHOTO OMITTED]

Former Chicago Bears great, attorney ALAN PAGE.

Concerts

The Black Student Union and other student organizations have brought some of the best and most popular per-

formers to the campus, including the Commodores, the Neville Brothers, B.B. King, James "Son" Thomas, Leontyne Price, the Spinners and many more.

[PHOTO OMITTED]

THE COMMODORES at Ole Miss.

[PHOTO OMITTED]

Internationally acclaimed operatic superstar LEONTYNE PRICE performed at the University in the Centennial Observance of the admission of women to Ole Miss.

Ole Miss in Review

[PHOTO OMITTED]

Above, Black students are involved in every aspect of student life at Ole Miss. Anthony Grace is chairing the RHA Judicial Council.

[PHOTO OMITTED]

Former Chicago Bears all-pro, attorney Alan Page chats with law students Calvin Buchanan and Alvin Chase.

[PHOTO OMITTED]

Just as ice cream and apple pie go together, so do beautiful girls and pageants at Ole Miss. The five finalists above anxiously await the judges' decision at the Miss Ebony Pageant.

[PHOTO OMITTED]

JAMES MEREDITH, the first Black Judge to attend the University, reflects on his college days with 2nd year law student Johnny Parker.

[PHOTO OMITTED]

CLARA BELL MOORE competes in The Miss Ebony Pageant.

[PHOTO OMITTED]

JOHN HAWKINS, the University's first Black varsity cheerleader, is shown leading the Rebels in a cheer.

[PHOTO OMITTED]

Dr. Lucius Williams (left), Assistant Vice Chancellor for Academic Affairs, chats with author Alex Haley during his visit to the Ole Miss campus.

[PHOTO OMITTED]

Sporting events are always a part of the excitement at Ole Miss. Above is Phyllis Hairston performing at half-time.

[PHOTO OMITTED]

Black student athletes have played a major role in Ole Miss sports. Above left, all-American candidate James "Pearl" Harbour (25), is congratulated by teammates Michael Smith (91) and Kent Austin (5), after catching a

touchdown pass. On right, all-American Ralph Spry shows winning form on the track. Below left, all-conference candidate Eric Laird shoots another high percentage shot. Below right, all-American Eugenia Connors (43), drives for a lay-up.

[PHOTO OMITTED]

Summary

You have just viewed and read of happenings at The University of Mississippi. As one can easily see, Black students are involved in the total educational development process.

We sincerely hope you decide to continue your formal education at Ole Miss, so that we can point you in the right direction.

Whatever your decision, make it one that will help you grow educationally, spiritually, culturally and socially.

The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

BOARD'S EXHIBIT 143

INFORMATION FOR MINORITY STUDENTS

[PHOTO OMITTED]

(Ole Miss)

THE UNIVERSITY OF MISSISSSIPPI

WE'RE FOR YOU!

[PHOTO OMITTED]

One of my goals as Chancellor of The University of Mississippi is to continue the growth in the number of Black students enrolled at the University. If you want to develop your capabilities fully, Ole Miss is for you.

As a student at Ole Miss, you will be encouraged to focus and develop your interests, whether they be in student government, campus clubs, Greek or non-Greek organizations, religious life, or varsity or intramural athletics.

We are anxious to see your name placed on a growing list of Black Ole Miss graduates whose lives have been enriched by the education they received here. Their successful careers prove that it makes a difference to have a degree from Ole Miss.

Visit us at Ole Miss; we're for you!

[sig illegible]

THE UNIVERSITY

The University of Mississippi is located in the rolling hills of north-central Mississippi, adjacent to the city of Oxford, an ideal college town. Memphis, one of the South's finest metropolitan areas, is only a little more than an hour's drive away.

The University was chartered in 1844 and had its first session in 1848 with 80 students in the College of Liberal Arts. Since that time, the University has grown to approximately 9,600 students pursuing degrees in more than 100 different areas of study.

The academic schools are divided into seven separate areas: the College of Liberal Arts, the Schools of Accountancy, Business Administration, Education, Engineering and Pharmacy, and the Law Center. If you are interested in graduate work, there are the Graduate School and the School of Law in addition to the Schools of Medicine, Nursing, Dentis[illegible]nd Health Related Professions at the Medical Center [illegible]us in Jackson.

Special support prog[illegible]ams at Ole Miss include Honors as well as free tutorial programs, the Student Counseling Center, and a Cooperative Education Program that alternates work and study time periods. Newly implemented mentor programs ensure an easy transition into University life and provide ongoing support for those students who need extra help.

STUDENT AFFAIRS

PRE-ADMISSIONS

The Pre-Admissions Office serves as the primary information center for high school and junior college prospective students. Information related to admissions, housing,

financial aid and scholarships, along with information on various academic and social programs, is available in this office. Tours of the campus for prospective students are given daily, Monday through Saturday. (Mon.-Fri. 8:15-4:45; Sat. 9-12)

Office of Pre-Admissions
Room 119, Lyceum Building
The University of Mississippi
University, MS 38677
Telephone: 800-222-5102 (in Mississippi)
(601) 232-7378 (out-of-state)

ADMISSIONS

Applicants must meet the following requirements:

A. Minimum ACT score of 15 or 700 SAT (Mississippi students must take the ACT.)

B. High School Units Required

Subject	Units
English	4 – All must have substantial writing components.
Mathematics	3 – Algebra I*, Geometry, Algebra II or above
Sciences**	3 – Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, Advanced Physics. One unit must be laboratory based.
Social Sciences	2½ – Must include United States History and American Government.

Subject	Units
Required Electives	1—Choose from a foreign language or mathematics [above Algebra II] or a science course from those listed above.

* Algebra I taken prior to the 9th grade fulfills the Algebra I requirement but does not negate the need for three units of math in grades 9-12.

** Neither "General Science" nor "Physical Science" is acceptable to meet the science requirement.

A Composite ACT score of 24 or SAT score of 980 exempts students from the specific high school requirements.

Students who have no more than one deficiency may be admitted if the appropriate sub-test score on the ACT is at least 18.

Academic Advising

Academic advising is a continuous process by which students are assisted in choosing a major, in selecting appropriate courses, in evaluating progress and in meeting degree program requirements.

At Ole Miss, each School or College has an advising coordinator. Dr. Jean Jones in the Department of Student Development (203 Lyceum) coordinates the overall advising system. A centralized system (a few people do all the advising) is offered in the Schools of Accountancy and Business Administration and for freshmen in the School of Pharmacy. A decentralized system (each student is assigned a faculty member in his/her degree specialty) is offered in the College of Liberal Arts, the Schools of Education and Engineering, for students beyond the freshman level in the School of Pharmacy and for students in the Court Reporting Program in the Law Center.

TRANSFERRING TO OLE MISS

A student transferring to the University from a regionally accredited institution of higher learning may be admitted in good standing if four basic requirements are met. To qualify you should:

1. submit an official transcript from each college previously attended,
2. have an overall grade point average of at least 2.0 on a 4.0 scale on all course work attempted,
3. be eligible to return to the last college attended,
4. show proof of an American College Test (ACT) composite score of 15 or Scholastic Aptitude Test (SAT) of 700 earned before your first college enrollment *if the following course requirements have not been met:*

6 semester hours of English Composition,
3 semester hours of College Algebra or above,
6 semester hours of Laboratory Science,
9 semester hours of Transferable Electives.

Official score reports from the testing services or scores recorded in official high school or college transcripts are acceptable.

LEARNING DEVELOPMENT CENTER (LDC)

Any Ole Miss student who could benefit from free tutoring in basic skills such as reading, writing, mathematics, studying or English as a second language may be helped by the Learning Development Center. Usually a student seeking help will be tutored by graduate assistants, although other undergraduate students and faculty members are available at certain times on a voluntary basis. The center is especially helpful for those students enrolled in developmental studies at the University.

[PHOTO OMITTED]

The LDC is open Monday through Friday from 9 a.m.-4 p.m. and evenings from 6 p.m. to 10 p.m. The center is located on the lower level of the John Davis Williams Library in the Reserve Room area.

Learning Development Center
110 John Davis Williams Library
University, MS 38677

[PHOTO OMITTED]

Afro-American Studies Program

Afro-American Studies coordinates the academic focus on the Black experience at the University. The program offers introductory courses, advanced courses in history (e.g., the Black Experience in Mississippi), cultural studies (e.g., Richard Wright, art) and social/behavioral studies (e.g., Black Politics). Courses meet the new University core requirement, serve as electives in several majors and can lead to a minor in Afro-American Studies. These courses are valuable for self-awareness, cross-cultural understanding and career advancement. Research seminars, films, speakers, art exhibits and trips to scholarly research conferences are sponsored by the program. The major research project focuses on The Black Experience in Mississippi and the migration of Mississippians to northern cities such as Chicago.

Afro-American Studies Program
303 Barr Hall
University, MS 38677
(601) 232-5977

THE CENTER FOR THE STUDY OF SOUTHERN CULTURE

The Center for the Study of Southern Culture is a pioneering model for the nation's regional study programs. It brings together a broad panorama of cultural experiences in an academic environment. Projects include the Encyclopedia of Southern Culture, films, records, publications, the international *Living Blues* magazine and newsletter, and the Jimmie Rodgers Memorial Association. For further information:

Southern Studies Program
Center for the Study of Southern Culture
The University of Mississippi
University, MS 38677
Telephone: (601) 232-5993

FINANCIAL AID

More than 50 percent of Ole Miss students receive financial aid from federal, state or University sources in the form of loans, grants, scholarships and employment. Currently, Ole Miss participates in the following federally funded financial aid plans: Pell Grants, National Direct Student Loans, Guaranteed Student Loans, Work Study and Health Professions Student Loans.

If you plan to apply for financial aid at Ole Miss, there are three steps to follow to make sure you're eligible.

1. Apply for admission to the University. (Forms are available from your high school counselor or from the Ole Miss Office of Admissions. The University of Mississippi, University, MS 38677.)

2. Complete a Financial Aid Form (FAF) by March 1 and mail to the College Scholarship Service, P.O. Box 2700, Princeton, NJ 08541. The University of Mississippi CSS code is 1840. (The FAF is required of all students seeking awards when financial need is a factor. Even

students seeking University merit scholarships are encouraged to file an FAF since many scholarships weigh financial need before being awarded.)

3. File a University Application for Financial Aid by April 1.

A brochure, *Information About Financial Aid*, listing loans, grants, scholarships and forms of employment, is available from the Financial Aid Office, The University of Mississippi, University, MS 38677.

Remember: The March 1 and April 1 dates are important since all awards are made on the basis of the filing of timely applications and forms.

HOUSING

Residence hall life is an enriching part of campus living. It provides chances to build close friendships. The residence halls at the University contain lounges, laundry facilities and kitchens. The rooms have essential furniture and are planned for two students per room. Local television service and TV cable hookups are included in the basic residence hall fee.

Single students who have completed fewer than 27 semester hours are required to sign a reduced rate housing contract for the academic year, and must live on campus except in the following cases:

1. when there are substantial medical reasons for not doing so.
2. when living with parent or legal guardian.

[PHOTO OMITTED]

Students with fewer than 27 hours will be required to live in freshman halls. (See back of housing application for hall designations.)

After receiving a completed application and $50 deposit, the Department of Housing and Residence Life will forward to the applicant a housing contract. Students who have earned more than 27 semester hours have the choice of signing either a reduced rate academic year contract for housing and meals or standard semester contracts for housing and/or meals. Assignments for the fall semester are generally made in early May.

FOOD SERVICES

University Food Services offers a variety of options to fit the nutritional needs of Ole Miss students. Diner's Express is a unique food payment plan, which works on a declining balance system similar to a credit card system in reverse. You deposit money into an account, and each of your purchases is automatically charged against that account.

OPPORTUNITIES FOR SUCCESS

There are many Ole Miss Black Alumni who have proved that Ole Miss does provide opportunities that last a lifetime and who are enjoying successful careers in the state and throughout the nation. Their areas of expertise cover a variety of career possibilities—as pharmacists, attorneys, consultants in a number of fields, certified public accountants, journalists, professional athletes, government employees and appointees, judges, product researchers, teachers, hospital administrators, engineers, computer specialists and medical professionals among others. The Career Alumni Network assists Ole Miss graduates even before graduation in making contacts with

alumni in similar fields of interest and in getting a jump on the job market. A few examples are:

[PHOTO OMITTED]

Reuben Vincent Anderson—Juris Doctor. He is Mississippi's first Black State Supreme Court Justice.

Harold Blakely—Bachelor of Science in Pharmacy. He is director of pharmacy at the Delta Medical Center in Greenville, MS.

Danny Covington—Bachelor of Arts; Masters in Criminal Justice. He is currently serving as district manager for Congressman Webb Franklin in the 2nd District in Mississippi.

Rose Jackson Flenorl—Bachelor of Arts in Journalism. She is currently a systems engineer with IBM Corporation in Memphis, TN.

William Jordan—Juris Doctor. He is senior staff attorney with Litton Industries in Pascagoula, MS.

Patricia Wise—Bachelor of Arts in Education; Juris Doctor. She is an attorney with Dockins and Wise Law Firm in Jackson, MS.

STUDENT ORGANIZATIONS

Black student organizations play a vital role in making the University what it is by being involved in every aspect of student life, whether chairing student committees such as the RHA Judicial Council or the Minority Concerns Committee, being active in intramural or intercollegiate athletics, marching with the "Pride of the South," serving as ambassadors or hosts to campus guests, participating in the Miss Ebony Pageant or running for Homecoming queen.

At Ole Miss you may choose from more than 150 organizations—recognition, professional, special interest and social groups. In addition, *The Daily Mississippian*, student government, the *Ole Miss* annual, and a variety of student committees provide outlets for professional and personal growth.

Black Student Union

The Black Student Union is a service, political and social organization designed to promote Black interests. The BSU's goal is to establish Black awareness and to unify and maintain Black identity. Membership is automatic.

Elections for BSU officers occur in the spring. The BSU is governed by an executive board selected by BSU members. Cultural events are sponsored to give students social and cultural enrichment at Ole Miss.

The month of February is Black History Month and is full of events for the University community. There are nationally known speakers, movies and educational seminars. Also, the BSU sponsors talent shows and discussions throughout the year.

Another element is the Black Student Union Gospel Choir which is a growing part of Ole Miss. It is comprised of approximately 75 students who voluntarily devote a portion of their time each week to sing and experience fellowship together. They travel across the state as official ambassadors of the University.

[PHOTO OMITTED]

Black Campus Ministry

The Black Campus Ministry is an organization offering a program of international spiritual development for

BEST AVAILABLE COPY

students. Religious activities are designed to provide a linkage between community churches and University students. All students are encouraged to participate in monthly programs. The campus minister is available for counseling on Thursday at 5 p.m. in the Old Chapel 317 and at other times by appointment. Second Baptist Church on Jackson Avenue has Worship Service at 11 a.m. and Training Union at 5 p.m. on Sunday and Bible Study at 7:30 p.m. on Wednesday. For more information, contact Reverend Leroy Wadlington, campus minister, 234-7868.

SOCIETY OF BLACK ENGINEERING STUDENTS (SBES)

Membership in SBES is open to all University students dedicated to promoting the advancement and academic development of Black students enrolled in engineering and computer science. The society of Black Engineering Students is a chartered member of the National Society of Black Engineers.

African Student Union

The African Student Union is a non-political organization which brings all African students of The University of Mississippi together for the purpose of advancing members' welfare. The Union takes active part in all social activities on campus, including the International Melting Pot Festival.

Black American Law Student Association

The Black American Law Student Association (BALSA) acquaints law students with professional problems and responsibilities. The goals of BALSA are to articulate and promote the professional needs and goals of Black

American law students, to foster and encourage professional competence, to focus upon the relationship of Black lawyers to the American legal structure, to instill in the Black attorney and law student a greater awareness and commitment to the needs of the Black community. BALSA has workshops each year to disseminate valuable legal information.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)

The purpose of the NAACP on the Ole Miss campus is to enhance the educational opportunities of students enrolled at Ole Miss.

GREEK ORGANIZATIONS

Each Black Greek organization has individual purposes, but they all share at least one common goal—promoting unity among Black college students. Black fraternities and sororities also share the responsibility of promoting leadership, scholarship and community service.

Represented on the Ole Miss campus are: Alpha Kappa Alpha, Delta Sigma Theta and Zeta Phi Beta sororities. Fraternities are: Alpha Phi Alpha, Kappa Alpha Psi, Omega Psi Phi and Phi Beta Sigma.

[PHOTO OMITTED]

Alpha Kappa Alpha

By exemplifying their principles of scholarship, leadership and friendship, Alpha Kappa Alpha, established at Ole

Miss on May 12, 1974, contributes to all phases of campus life. The first Greek-letter organization for Black women, Alpha Kappa Alpha was founded at Howard University in Washington, D.C., in 1908.

Delta Sigma Theta

Delta Sigma Theta is a Greek-letter society having over 100,000 members. There are 700 chapters grouped into seven regions according to their geographic area. They are located in 45 states, the District of Columbia, the Virgin Islands and the Republic of Haiti in the Caribbean and in Liberia, West Africa, Delta was founded at Howard University in Washington, D.C., on January 13, 1913.

Kappa Alpha Psi

Founded January 5, 1911, at the University of Indiana, Kappa Alpha Psi is the newest fraternity on campus, established in September of 1982. Kappa men have involved themselves in many campus and community activities. They are especially proud of the number of members associated with the Rebel athletic programs.

Omega Psi Phi

The Eta Zeta Chapter of Omega Psi Phi is a fraternity boasting men involved in all aspects of The University of Mississippi. In community activities and in campus life, in athletics and organizations, the Omega Psi Phis are there exemplifying ideals of leadership and brotherhood.

Phi Beta Sigma

Phi Beta Sigma, the social fraternity known for serving humanity, was founded January 9, 1914, at Howard University, and made its way to Ole Miss in the spring of

1975. In any facet of campus life, a Phi Beta Sigma can be depended on for duty.

ATHLETICS

Black student athletes have played a major role in Ole Miss sports. Sporting events are always a part of the excitement at the University.

[PHOTO OMITTED]

FACULTY AND STAFF

There are a number of Black faculty and staff members at the University, all of whom are willing to help you with any special problems that may arise. We're sure you'll find all the faculty and staff willing to advise and counsel you on academic matters and to provide support when you need it.

[PHOTO OMITTED]

Academic excellence has always been the foremost pursuit of The University of Mississippi – an ideal that has remained fresh and vibrant and as everchanging as the generations of graduates who know us affectionately as Ole Miss.

Most importantly, the University has achieved true international stature for its blending of scholarship and research, public service and athletic success. We have told you and shown you about some of the happenings at The University of Mississippi. We sincerely hope that you decide to continue your formal education at Ole Miss. We

are prepared to tell you more about why we think Ole Miss is for you.

A LEGACY OF ACHIEVEMENT
WITH VISION FOR TOMORROW

[ILLUSTRATION OMITTED]

BOARD'S EXHIBIT 144

Minority students at Ole Miss are involved in the total educational experience; we want you to join the growing ranks of minority graduates who have found that a degree from Ole Miss makes a difference.

Ole Miss
WE'RE FOR YOU

Student Activities

The Office of Student Activities exists for your benefit. The assistant dean of students is ready to help with any special problems that you may encounter when you make the transition from home to college. Our purpose in this office is to provide you with direction and information that will ease this transition period. Remember, we are here to assist you, and because of you, we are here.

Office of Student Activities
Room 200, Lyceum Building
University, MS 38677

Counseling

Four innovative programs, designed to help students ease into their new environment, have been developed in the last few years. These are MENTOR, VIP, FIT and SMILE.

MENTOR (Maintaining Excellence by Nurturing Toward Opportunities for Retention) is targeted toward assisting minority students in adjusting to the college campus. University faculty members serve as special mentors to develop rapport and friendship with the students.

VIP (Mentoring for VIP students) was started to recruit academically superior students and to provide special stimulation for them through their relationship with faculty mentors who challenge these gifted students to reach their maximum potential through studies and outside exploration.

FIT (Facilitating Individual Transition) is an outreach effort conducted by members of the Division of Student Affairs and is designed to monitor and assist freshmen students who are identified as "being at risk" or having low high school grade-point averages or borderline ACT scores.

SMILE (Students Motivating the Inter-Communicative Learning Environment) sets up a counseling network for minority students or those students with grade point averages under 2.0 with a goal of retention of currently enrolled students. It is an effort to make all students feel welcome at the University and to feel a part of the Ole Miss experience.

Division of Student Affairs
Room 200, Lyceum Building
University, MS 38677

Learning Development Center (LDC)

Any Ole Miss student who could benefit from free tutoring in basic skills such as reading, writing, mathematics, studying or English as a second language may be helped by the Learning Development Center. Usually a student seeking help will be tutored by graduate assistants, although other undergraduate students and faculty members are available at certain times on a voluntary basis. The Center is especially helpful for those students enrolled in developmental studies at the University.

The LDC has been serving students since the fall of 1976 and is open Monday through Friday from 9 a.m. - 4 p.m. and evenings from 6 p.m. to 10 p.m. The Center is located on the lower level of the John Davis Williams Library in the Reserve Room area.

Learning Development Center
110 John Davis Williams Library
University, MS 38677

Pre-College Conference

Throughout the summer Ole Miss conducts a series of pre-registration conferences so that you can meet with counselors and advisers who will answer your questions about career choices, majors, courses and credits. In fact, your counselor or adviser will help you select the course of study which best suits your aptitudes and career interests. You will be able to take aptitude tests and the ACT if you haven't already done so, and to pre-register so you won't have to worry about classes filling up in the fall. There are several conferences throughout the summer, and you can pick the one that best fits into your schedule.

Department of Student Development
Room 203, Lyceum Building
University, MS 38677

Career Services and Placement

The University of Mississippi's Career Services and Placement Office helps students and alumni in the areas of career exploration, career assessment, summer employment and professional employment upon graduation.

The office coordinates an extensive on-campus interview program, bringing together those who register with representatives from business, industry, government agen-

cies and educational institutions. In addition, the office maintains and refers registrants' credentials to prospective employers; compiles and distributes job announcement bulletins; conducts career planning classes, workshops and job search seminars; maintains a career information center; and serves as a cosponsor of the annual minority career seminar.

Students are encouraged to familiarize themselves with and to use Career Services and Placement early in their college years, ideally, long before the graduation semester.

Career Services and Placement
Room 303, Lyceum Building
University, MS 38677

[Photo Omitted]

Afro-American Studies Program

Afro-American Studies coordinates the academic focus on the Black experience at the University. The program offers introductory courses, advanced courses in history (e.g., the Black Experience in Mississippi), cultural studies (e.g., Richard Wright, art) and social/behavioral studies (e.g., Black Politics). Courses meet the new University core requirement, serve as electives in several majors and can lead to a minor in Afro-American Studies. These courses are valuable for self-awareness, cross-cultural understanding and career advancement. Research seminars, films, speakers, art exhibits and trips to scholarly research conferences are sponsored by the program. The major research project focuses on The Black Experience in Mississippi and the migration of Mississippians to northern cities such as Chicago.

Afro-American Studies Program
303 Barr Hall
University, MS 38677
(601) 232-5977

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2. Complete a Financial Aid Form (FAF) by March 1 and mail to the College Scholarship Service, P.O. Box 2700, Princeton, NJ 08541. The University of Mississippi CSS code is 1840. (The FAF is required of all students seeking awards when financial need is a factor. Even students seeking University merit scholarships are encouraged to file an FAF since many scholarships weigh financial need before being awarded.)
3. File a University Application for Financial Aid by April 1.

A brochure, *Financial Aid at Ole Miss*, listing loans, grants, scholarships and forms of employment, is available from the Financial Aid Office, The University of Mississippi, University, MS 38677.

Remember: The March 1 and April 1 dates are important since all awards are made on the basis of the filing of timely applications and forms.

HOUSING

Student housing includes residence halls, married student apartments and a mobile home park. Residence hall rooms provide each occupant with a single bed, desk, lamp, closet and drawer space. Each room has a telephone and a hookup for cable television. Students supply their own linens, pillows and personal items. Bathrooms are located conveniently on each floor. The Student Housing Office has room and window sizes for each residence hall and for campus apartments.

Single students who have completed fewer than 27 semester hours are required to sign a reduced rate housing contract for the academic year, and must live on campus except when there are substantial medical reasons for not doing so or when living with parent or legal guardian. Students with fewer than 27 hours will be required to live in freshmen halls.

To reserve campus housing, you should:

1. Complete and return an Application for Student Housing (available from Student Housing, The University of Mississippi, University, MS 38677; the Office of Admissions; or from the back of the admissions booklet *Opportunities That Last A Lifetime,*

2. Submit a deposit of $50 with your application. After receiving a completed application and $50 deposit, the Department of Housing and Residence Life will forward to the applicant a housing contract. Students who have earned more than 27 semester hours have the choice of signing either a reduced rate academic year contract for housing and meals or standard semester contracts for housing and/or meals. Assignments for the fall semester are generally made in early May.

Details about campus housing – rules and regulations, room assignments, refrigerators, air conditioning – are contained in the booklet *Living on Campus at Ole Miss,* which is available from Student Housing, University, MS 38677.

[Photo Omitted]

FOOD SERVICES

The Ole Miss Meal Plan offers students four meal plan options, all of which begin on the first day of registration and continue through the last day of examinations.

Plan	Meals Available	Semester Cost
21 meals/week	357	$625.00
14 meals/week	238	$580.00
10 meals/week	170	$515.00
5 meals/week	85	$310.00

To make mealtime more versatile and convenient for your schedule, the Ole Miss Meal Plan does not limit students to eating only at the Cafeteria. Meal plan cards are also honored at the Union and at the Alumni House Snack Bar.

OPPORTUNITIES FOR SUCCESS

There are many Ole Miss Black Alumni who have proved that Ole Miss does provide opportunities that last a lifetime and who are enjoying successful careers in the state and throughout the nation. Their areas of expertise cover a variety of career possibilities as pharmacists, attorneys, consultants in a number of fields, certified public accountants, journalists, professional athletes, government employees and appointees, judges, product research-

ers, teachers, hospital administrators, engineers, computer specialists and medical professionals among others. The Career Alumni Network assists Ole Miss graduates even before graduation in making contacts with alumni in similar fields of interest and in getting a jump on the job market. A few examples are:

REUBEN VINCENT ANDERSON – Juris Doctor. He is a circuit court judge in Hinds County and formerly served as County Court judge.

CLARENCE DUBOSE – Bachelor of Science in Pharmacy. He owns his own pharmacy in Moss Point.

JERRY MICHAEL HARRIS, Ph.D. – Bachelor of Science in Electrical Engineering. Dr. Harris is conducting product research for Exxon in Houston, Texas.

WILLIAM JORDAN – Juris Doctor. He is senior staff attorney with Litton Industries in Pascagoula, MS.

GARY A. McGAHA, Ph.D. – Doctor of Philosophy in Political Science. Dr. McGaha is assistant to the president of Kentucky State University at Frankfort.

EDITH HICKINBOTTOM KELLY – Bachelor of Business Administration in Accountancy. She is a Certified Public Accountant (C.P.A.) in Memphis, TN.

BURNIS MORRIS – Bachelor of Arts in Journalism. Mr. Morris is city editor of the *Atlanta* (Ga.) *Constitution*.

CONSTANCE SLAUGHTER-HARVEY – Juris Doctor. She was appointed by Gov. William Winter as Director of the Department of Human Development for the State of Mississippi.

JERALD ULMER – Bachelor of Public Administration in Urban Administration; Master of Health Care Administration in Health Administration. He is a hospital administrator with the U.S. Navy.

LARRY WEEDEN – Bachelor of Arts in Journalism; Juris Doctor. He is an Assistant Professor of Law at North Carolina Central University in Durham.

[Photo Omitted]

STUDENT ORGANIZATIONS

Student organizations are the extras of college life and provide opportunities to expand your interests or to enjoy the company of people with similar interests. At Ole Miss you may choose from more than 150 organizations – recognition, professional, special interest and social groups. In addition, *The Daily Mississippian*, student government, the *Ole Miss* annual, and a variety of student committees provide outlets for professional and personal growth.

Black Student Union

The Black Student Union is a service, political and social organization designed to promote Black interests. The BSU's goal is to establish Black awareness and to unify and maintain Black identity. Membership is automatic.

[Photo Omitted]

Elections for BSU officers occur in the spring. The BSU is governed by an executive board selected by BSU members. Cultural events are sponsored to give students social and cultural enrichment at Ole Miss.

The month of February is Black History Month and is full of events for the University community. There are nationally known speakers, movies and educational seminars. Also, the BSU sponsors talent shows and discussions throughout the year.

Another element is the Black Student Union Gospel Choir which is a growing part of Ole Miss. It is comprised of approximately 75 students who voluntarily devote a portion of their time each week to sing and experience fellowship together. They travel across the state as official ambassadors of the University.

Society of Black Engineering Students (SBES)

Membership in SBES is open to all University students dedicated to promoting the advancement and academic development of Black students enrolled in engineering and computer science. The society of Black Engineering Students is a chartered member of the National Society of Black Engineers.

[Photo Omitted]

African Student Union

The African Student Union is a non-political organization which brings all African students of The University of Mississippi together for the purpose of advancing members' welfare. The Union takes active part in all social activities on campus, including the International Potluck Festival.

Black American Law Student Association

The Black American Law Student Association (BALSA) acquaints law students with professional problems and responsibilities. The goals of BALSA are to articulate and promote the professional needs and goals of Black American law students, to foster and encourage professional competence, to focus upon the relationship of Black lawyers to the American legal structure, to instill in the Black attorney and law student a greater awareness and commitment to the needs of the Black community. BALSA has workshops each year to disseminate valuable legal information.

National Association for the Advancement of Colored People (NAACP)

The purpose of the NAACP on the Ole Miss campus is to enhance the educational opportunities of students enrolled at Ole Miss.

GREEK ORGANIZATIONS

Each Black Greek organization has individual purposes, but they all share at least one common goal – promoting unity among Black college students. Black fraternities and sororities also share the responsibility of promoting leadership, scholarship and community service.

Represented on the Ole Miss campus are: Alpha Kappa Alpha, Delta Sigma Theta and Zeta Phi Beta sororities. Fraternities are: Alpha Phi Alpha, Kappa Alpha Psi, Omega Psi Phi and Phi Beta Sigma.

Alpha Kappa Alpha

By exemplifying their principles of scholarship, leadership and friendship, Alpha Kappa Alpha, established at Ole Miss on May 12, 1974, contributes to all phases of campus life. The first Greek-letter organization for Black women, Alpha Kappa Alpha was founded at Harvard University in Washington, D.C., in 1908.

Delta Sigma Theta

Delta Sigma Theta is a Greek-letter society having over 100,000 members. There are 700 chapters grouped into seven regions according to their geographic area. They are located in 45 states, the District of Columbia, the Virgin Islands and the Republic of Haiti in the Caribbean and in Liberia, West Africa. Delta was founded at Howard University in Washington, D.C., on January 13, 1913.

Zeta Phi Beta

Zeta Phi Beta was organized at Howard University on January 16, 1920. It was the idea of the founders that the sorority would reach college women in all parts of the country who were sorority-minded and who desired to follow up the ideals of finer womanhood, scholarship, sisterly love and community service. The Zetas choose women who have high scholastic achievement and who desire to follow the ideals of the sorority.

[Photo Omitted]

Alpha Phi Alpha

Alpha Phi Alpha was founded at Cornell University in 1906. In the spring of 1978, The University of Mississippi welcomed Alpha Phi Alpha to its campus. Proudly wearing the colors black and gold, its members have proved themselves active in all phases of campus life.

Kappa Alpha Psi

Founded January 5, 1911, at the University of Indiana, Kappa Alpha Psi is the newest fraternity on campus, established in September of 1982. Kappa men have involved themselves in many campus and community activities. They are especially proud of the number of members associated with the Rebel athletic programs.

Omega Psi Phi

The Eta Zeta Chapter of Omega Psi Phi is a fraternity boasting men involved in all aspects of The University of Mississippi. In community activities and in campus life, in athletics and organizations, the Omega Psi Phis are there exemplifying ideals of leadership and brotherhood.

Phi Beta Sigma

Phi Beta Sigma, the social fraternity known for serving humanity, was founded January 9, 1914, at Howard University, and made its way to Ole Miss in the spring of 1975. In any facet of campus life, a Phi Beta Sigma can be depended on for duty.

CULTURAL INSIGHTS

Various programs are sponsored or cosponsored by the BSU, including a Speaker's Forum. In the past, a number of nationally known Black leaders have appeared on the Ole Miss campus including:

Dr. Emmit Burns, local and national civil rights activist

Charles Evers, former mayor of Fayette, Mississippi

Ismail Jamal, founder and director of the Institute of Self-Healing

James Meredith, civil rights activist

Haki Madhubute (formerly Don Lee), poet, writer, publisher and community activist

Dr. Conrad Worrill of Chicago, Illinois, who discussed "The Black Liberation Movement and Implications for Organizing in the 80s"

Dr. Margaret Walker Alexander, distinguished novelist and educator who was the keynote speaker during the 20th Anniversary program of the Admission of Black Students to the University.

Yvonne Braithwaite-Burke, attorney-at-law and former member of United States Congress.

Wendell Gunn, assistant director for commerce and trade in the Office of Policy Development in the Reagan Administration

Alex Haley, author, historian and lecturer who is world renowned for *Roots*

Constance Baker Motley, chief judge, United States District Court, Southern District of New York

A. Leon Higginbotham Jr., judge, United States Circuit Court of Appeals for the Third Circuit

Alan Page, attorney and former Chicago Bears star

Leontyne Price, internationally acclaimed operatic superstar who became the University's first honorary alumna during the centennial observance of the admission of women to Ole Miss

FACULTY AND STAFF

There are a number of Black faculty and staff members at the University, all of whom are willing to help you with any special problems that may arise. We're sure you'll find all the faculty and staff willing to advise and counsel you on academic matters and to provide support when you need it.

[Photo Omitted]

CONCERTS

The Black Student Union and other student organizations have brought some of the best and most popular performers to the campus, including the Commodores, the Neville Brothers, B. B. King, James "Son" Thomas, Leontyne Price, the Spinners and many more.

[Photo Omitted]

WE'RE FOR YOU!

Black students play a vital role in making the University what it is by being involved in every aspect of student life, whether chairing student committees such as the RHA

Judicial Council or the Minority Concerns Committee, being active in intramural or intercollegiate athletics, marching with the "Pride of the South," serving as ambassadors or hosts to campus guests, participating in the Miss Ebony Pageant or running for Homecoming queen, working in various offices on campus through student employment or as student researchers, serving as resident assistants in the residence halls or as officers in social and professional organizations, Black students are involved in the total educational development process.

We have told you and shown you about some of the happenings at The University of Mississippi. We sincerely hope that you decide to continue your formal education at Ole Miss. We are prepared to tell you more about why we think Ole Miss is for you and how we can provide you with tremendous opportunities that last a lifetime.

[Photo Omitted]

[Photo Omitted]

A LEGACY OF ACHIEVEMENT
WITH VISION FOR TOMORROW

The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

[Reply Mail Form Omitted]

BOARD'S EXHIBIT 145

OLE MISS
THE UNIVERSITY OF MISSISSIPPI

[Photo Omitted]

The Learning Development Center
(LDC) Tel. 232-7116

[Photo Omitted]

What The Learning Development Center (LDC) Offers

Any Ole Miss student who could benefit from free tutoring in basic skills such as reading, writing, mathematics, studying, or English as a second language, may be helped by the Learning Development Center (LDC). Usually a student seeking help will be tutored by Graduate Assistants, although other undergraduate students and faculty members are available at certain times on a voluntary basis. One can get free, non-credit, tutorial help in areas listed below. The Center is especially helpful to those students enrolled in Developmental Studies at the University.

Writing Program

The LDC offers individual help to students facing the most common problems in composition. First, the staff helps students to write correct sentences—sentences properly punctuated and free of grammatical errors. Students learn to overcome the "cardinal errors"—subject/verb disagreement, sentence fragments, and fused sentences. The staff also helps students with spelling, vocabulary development, and finally with the organization of paragraphs and essays. All students enrolled in English 100 are required to

participate in the LDC writing program as a lab for that course. Students in English 101-102 may be referred to the LDC for further work in specific areas. But any student may go to the LDC voluntarily to work on any aspect of composition which is important to that student. Diagnostic materials are available to help students determine where they need particular work, and programmed instructional materials are available for use by students on an individualized basis.

Reading Program

The LDC offers diagnostic and tutorial services for students who want to improve their reading skills. Primary emphasis is placed on comprehension and vocabulary development, although the LDC program can increase a student's reading rate. All students enrolled in EDRD 100 are required to participate in the LDC reading program as a lab for that course. Students enrolled in the Effective Study 101 course are often referred to the LDC for reading improvement. Any student may go to the LDC voluntarily to work on any aspect of reading which seems important to that student. For example, Law School and Pre-Med students often use the LDC reading clinic to improve their reading rate and comprehension.

Mathematics Program

The LDC math program offers tutorial assistance in basic arithmetic skills, algebra, trigonometry, and calculus. The Center also provides diagnostic and remedial services for those students seeking help in math, and administers post tests to measure student progress following tutorial instruction. Students enrolled in Math 100 are urged to participate in the LDC program to supplement and reinforce their course work. Any student may go to

the LDC voluntarily for help in preparation for math exams.

Physics

The LDC offers limited tutorial assistance in physics. One graduate assistant is available on the average of two hours per day to assist in this area. Any student enrolled in a physics course may receive help in the LDC, either by referral or by taking the initiative to check with the LDC director or secretary.

Chemistry

The LDC offers tutorial assistance in Chemistry whenever possible. The Center relies on volunteers to provide service in this area presently. There is a possibility that at least one graduate assistant will be available a couple of hours each day to assist students in chemistry. Students interested in tutorial assistance in this area should check with the LDC director or secretary.

[Photo Omitted]

English as a Second Language

A conversation class for foreign students is offered by the Learning Development Center. An instructor is available for two hours daily for conversation and individualized instruction. English as a second language cassette tapes and books are available during library hours for individual use. Social events such as international coffee hours, monthly "pot-luck" dinners, and cross cultural structured workshops that encourage the use of English conversation with Americans are sponsored each semester. Foreign students entering the University with limited

English speaking ability must enroll in EDUC 100, offered through the School of Education. All students enrolled in EDUC 100 are required to participate in the LDC conversation class. Other foreign student enrollees are encouraged to participate in all LDC sponsored programs.

Counseling

While all LDC staff serve as counselors for students attending the Center, there will be a professional counselor available most of the time to whom students may go when the need arises. The counselor will listen to students' problems, and advise them on such matters as financial aid, social adjustments, academic problems, and any other personal matters which may concern a student from time to time. The LDC counselor is especially prepared to assist minority and/or disadvantaged students.

Effective Study Course

A course designed especially for college students to give special assistance in the area of study skills is Effective Study 101. Effective Study is taught through the [Photo Omitted] Department of Educational Administration and Higher Education in the School of Education and is a 3-hour academic course which may be counted as an elective. The course offers specific instruction in (1) time management (2) preparation for examinations (3) note-taking skills (4) effective use of textbooks (5) reading skills and (6) adjustment to college and motivation. Classes are small enough so that each student receives individual attention aimed toward setting goals and improving academic skills. Students enrolled in Effective Study are sometimes referred to the LDC in order to improve their reading and writing proficiency.

Hours and Referrals

The Learning Development Center has been serving students since the Fall of 1976. It will be open Monday through Friday from 9 a.m. to 4 p.m. and evenings from 6 p.m. to 10 p.m. The LDC is located on the lower level of the John D. Williams Library in the Reserve Room Area.

Faculty members may refer students to the LDC to correct educational deficiencies. The Student Counseling Center and the Admissions Office may also refer students. Although students who are referred to the LDC will have preference in service, other students seeking help are encouraged to visit the Center on their own initiative.

For More Information, contact:

Dr. Lucius Williams, Director
Learning Development Center
The University of Mississippi
University, MS 38677

The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

[Mailer Omitted]

BOARD'S EXHIBIT 146

Information For Transfer Students

[Photo Omitted]

Ole Miss
THE UNIVERSITY OF MISSISSIPPI

WE'RE FOR YOU!

Whether you are transferring from a junior college or from another university or college, the move you make will be one of the most important of your life. That's why at The University of Mississippi we offer superior teaching by professors who take a personal interest in their students. We also offer a broad range of student services and programs designed to meet the needs and interests of our students. Our excellent academic programs are being translated into successful careers in a wide variety of fields. At The University of Mississippi, we do this and more. And that's why at Ole Miss we say, we're for you!

APPLYING AT OLE MISS

A student transferring to the University from a regionally accredited institution of higher learning may be admitted in good standing if four basic requirements are met. To qualify you should:

1. Submit an official transcript from each college previously attended,

2. Have an overall grade-point average of at least 2.0 on a 4.0 scale on all course work attempted,

3. Be eligible to return to the last college attended,

4. Show proof of an American College Test (ACT) composite score of 15 or Scholastic Aptitude Test (SAT) of 700 earned before your first college enrollment *if the following course requirements have not been met:*

6 semester hours of English Composition,
3 semester hours of College Algebra or above,
6 semester hours of Laboratory Science,
9 semester hours of Transferable Electives.

Official score reports from the testing services or scores recorded on official high school or college transcripts are acceptable.

A small number of new transfer students may be admitted without meeting all of the above requirements. For more information, please contact the Office of Admissions and Records.

Your application for admission and transcript(s) should be received by Ole Miss at least 20 days prior to the intended registration period. If you will be attending school elsewhere 20 days or less before the time you will enroll at Ole Miss, it may be helpful to bring a copy of your grade report to registration.

TRANSFERRING CREDITS

Yes, your credits earned at a Mississippi junior college, for instance, are transferable to Ole Miss (although students don't receive transfer credits for courses narrowly designed for technical and vocational career programs, e.g., welding). A general rule is that up to one half of a total program (usually 63-65 hours) can be transferred from a junior or community college. Basic courses in English, history, chemistry, biology, modern languages, and economics, to name a few, are readily accepted at Ole Miss. As a matter of policy, the University will provide you with an evaluation of previously earned credits.

A good source of information is the University's *Undergraduate Catalog*, which cross lists, where applicable, our courses with corresponding junior college courses by including the Uniform Course Numbering System adopted by Mississippi public junior colleges.

After your enrollment, all course work at other institutions will be recorded without change in grades on your University academic record. Transferred courses with D (1.00) grades can be applied toward a bachelor's degree if all of the transferred courses applied toward the degree average C (2.00) or better. A grade-point deficiency on transferred courses can be removed by earning grades above C on courses at Ole Miss. But you must earn at least a C average on Ole Miss course work applied toward a bachelor's degree.

Ole Miss has admission counselors who specialize in working with transfer students and who will meet with you when visiting your campus or when you visit Ole Miss. If you have any questions or doubts, please call our Admissions Office—toll free in-state 1-800-222-5102, or (601) 232-7226. We'll be glad to help.

[Photo Omitted]

FINANCIAL AID

To apply for financial aid at Ole Miss—loan, grant, scholarship, or employment—follow these steps to assure your eligibility.

1. An application for admission to the University must be submitted. Application forms are available from the Office of Admissions and Records, The University of Mississippi, University, MS 38677.

2. A Financial Aid Form (FAF) must be sent to the College Scholarship Service (CSS), Box 2700, Princeton,

NJ 08541, no later than *March 1*. The CSS Code for The University of Mississippi is 1840. This form is available from CSS, your college counselor, or the Department of Financial Aid. The University of Mississippi, University, MS 38677.

3. A University Application for Financial Aid must be completed and returned to the Department of Financial Aid by *April 1*. These are available from the department or your counselor.

4. To receive primary consideration for scholarships, you should have your college send to the University a transcript of your grades not later than April 1 prior to enrollment.

A brochure, *Information About Financial Aid*, is available from the Department of Financial Aid or from the Office of Admissions.

HOUSING

All residence halls are equipped with essential furnishings and utilities as well as hook-ups for telephones and cable television, but you will need to bring linens, pillows, and personal items. Details about campus housing—including room assignments, refrigerators, rules and regulations, air conditioning—can be obtained from the Department of Student Housing, The University of Mississippi, University, MS 38677. We also have 320 apartments on campus for married students and a trailer park.

Even if you haven't been living on campus, you should consider it at Ole Miss. For transfer students in particular, there is a sense of community inherent in residence hall life. Living on campus furnishes opportunities to meet people in familiar situations and provides the avenues for taking leadership roles in various aspects of campus life.

Upper-class halls (freshmen are housed in freshman residence halls) are centrally located with a number of resources available, including a connection to the administration through the hall directors and resident advisers. There is an academic atmosphere, a level of maturity among college-experienced people, and a community spirit. And once you add in all the "extras" involved in living off campus, you'll find that campus housing is quite economical.

To secure campus housing, you must:

1. Complete and return an Application for Student Housing (available from the Department of Student Housing, the Office of Admissions or from the back section of the admissions prospectus.

2. Submit a deposit of $50 with your application.

In addition to campus housing, there is a selection of off-campus facilities.

[Photos Omitted]

ACADEMIC INFORMATION

Six undergraduate academic divisions are on the Oxford campus; the College of Liberal Arts (1848), School of Accountancy (1979), School of Business Administration (1917), School of Education (1903), School of Engineering (1900), and School of Pharmacy (1908). Also on the Oxford campus are the Graduate School and the Law Center. The Jackson campus includes the School of Medicine (1903), School of Nursing (1958), School of Health Related Professions (1972), and School of Dentistry (1973).

In addition to the six undergraduate divisions, there are special programs on the Oxford campus; Afro-American Studies, Center for the Study of Southern Culture, Sarah

Isom Center for Women's Studies, Learning Development Center, Research Institute of Pharmaceutical Sciences, Small Business Development Center, Mississippi Mineral Resources Institute, Center for Population Studies, Law Center, the Honors Program, and the Center for Telecommunications.

COUNSELING/PRE-REGISTRATION

Ole Miss holds a series of Counseling/Pre-Registration Conferences beginning in June each summer for new students. Many students attend for three days, but as a transfer student you can, if you wish, complete the program in one day; a Monday. You must, however, come to one of the scheduled conferences since pre-registration does not occur every week. Please contact the Student Development Office for additional information. At the conference you will have orientation and instructional meetings with the Student Counseling Center staff and other University personnel, meet individually with your academic adviser, and complete the registration process, if you choose to pre-register.

MISCELLANEOUS

Many additional questions can be answered by securing from our Department of Student Life a copy of the *M Book*, the handbook of standards and activities. This booklet contains information on student government; clubs, organizations, and cultural activities; honors; requirements on vehicle registration, traffic rules and regulations, and parking; fraternities and sororities; food services; money matters; Student Health Service; religious associations; and special services.

PHI THETA KAPPA

Members of Phi Theta Kappa, the top junior college honorary fraternity which recognizes leadership, service, and scholarship, automatically receive $300 awards from the University after enrollment and are invited to join the national award-winning alumni chapter at Ole Miss. The alumni chapter offers invaluable assistance to all transfer students by organizing special orientation sessions, publishing an off-campus housing brochure, hosting Junior College and PTK Days on campus, and by encouraging participation in academic, social, cultural, leadership, and athletic aspects of campus life.

Plan now to come by and visit, meet members of our faculty and staff, and enjoy the beautiful campus. If you are planning to visit on a weekday or on Saturday morning, call and make an appointment so we'll be sure and have someone to guide you. Just call toll free in-state 1-800-222-5102 or (601) 232-7378. We're sure you'll discover that Ole Miss is for you.

FOR FURTHER INFORMATION

ADMINISTRATION

Admissions, Records, Transcripts ..... (601) 232-7226
(Toll Free in Mississippi 1-800-222-5102)
Bursar ..... (601) 232-7256
Career Services and Placement ..... (601) 232-7174
Financial Aid ..... (601) 232-7175
Health Service ..... (601) 232-7275
Religious Life ..... (601) 232-7135
Student Activities (Campus Events, Rush) . (601) 232-7705
Student Development ..... (601) 232-7021
(Career Information, Counseling/Pre-Registration)
Student Housing ..... (601) 232-7328
Veterans Information ..... (601) 232-7226
Visits (Pre-Admissions) ..... (601) 232-7378
(Toll Free in Mississippi 1-800-222-5102)

ACADEMICS

College of Liberal Arts ..... (601) 232-7177
School of Accountancy ..... (601) 232-7468
School of Business Administration ..... (601) 232-5820
School of Education ..... (601) 232-7063
School of Engineering ..... (601) 232-7407
School of Pharmacy ..... (601) 232-7265
Law Center ..... (601) 232-7361
Graduate School ..... (601) 232-7474
School of Dentistry ..... (601) 984-6000
School of Health Related Professions .... (601) 984-6300
School of Medicine ..... (601) 984-5010
School of Nursing ..... (601) 984-6200

BOARD'S EXHIBIT 151

OPPORTUNITIES THAT LAST A LIFETIME
THE UNIVERSITY OF MISSISSIPPI

Ole Miss

[Photo Omitted]

ADMISSION TO THE UNIVERSITY

Applying for admission to the University as a freshman is easy. Just (1) complete the application form in the back of this book, (2) request that your American College Test (ACT) scores be sent to The University of Mississippi, and (3) ask your high school to forward a transcript of work completed through the first half of your senior year.

To qualify for admission as a freshman, the composite score on your ACT must be 15 or higher. The results of the Scholastic Aptitude Test (SAT) can be used by out-of-state applicants; Mississippi residents must submit ACT scores. (Minimum SAT score requirement is 720.) Freshman admission requirements in regard to high school units will change significantly for the fall session 1986. If you are considering enrolling in August, 1986, please be sure to check with the Office of Admissions and Records about current standards.

Early Admission: Early admission is possible if you have an outstanding academic record at the end of your third year in high school. That means you should have a standard score on the ACT or SAT that places you in the top 30 percent of all high school seniors in the nation (ACT composite of 24; SAT composite of 1000). In addition, you should have completed 15 units of high school work: 3 in English, 2 in math, 2 in social sciences. A letter

of recommendation from your high school principal is also required and must include a statement that you have completed at least 15 units toward graduation from high school.

Transfer Students: If you are planning to transfer to the University from another institution of higher learning, you should submit your application as soon as possible. Have complete official transcripts sent from each college previously attended. Students who meet the requirements for freshman entrance may transfer at any time from any accredited institution of higher learning provided an overall 2.0 grade point average (on a 4.0 scale) has been maintained.

Note: Whether you're planning to enter the University as a new or transfer student, you may apply as early as one year prior to the time you expect to enroll. Application should be made as early as possible but no later than 20 days before registration.

BOARD'S EXHIBIT 154

BROCHURE – HEALTH PROFESSIONAL CAREER PREPARATION AT THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

SCHOOL OF MEDICINE

ADMISSION REQUIREMENTS

All students who apply to the UMC School of Medicine for M.D. study must complete at least three years of college work at an accredited college with no less than 90 acceptable semester hours. Strong preference is given to applicants who will complete all requirements for a baccalaureate degree before entrance to medical school. In undergraduate school, students should develop proficiency in a specific area and acquire a background in the humanities and the social sciences, consulting closely with his or her pre-medical adviser on specific courses.

Applicants are considered for admission on the basis of:

1. Overall grade point average,
2. Average for science and math courses,
3. New Medical College Admissions Test (New MCAT) scores, and
4. Personal interview.

Medical school admission is very competitive. The admissions committee looks for individuals with good grades, competitive scores on the New MCAT, maturity, an ability to communicate, and a demonstrated ability to accept responsibility. It would be to your advantage to do well in all academic courses. Although grades alone won't get you into medical school, good ones help.

SCHOOL OF DENTISTRY

ADMISSIONS

All students who apply to the School of Dentistry must complete at least three years of college work at an accredited college with no less than 90 acceptable semester hours. The school offers the D.M.D. Preference is given to applicants who complete all requirements for a baccalaureate degree before entrance to dental school. In undergraduate school, the student should develop proficiency in a specific area and acquire a background in the humanities and the social sciences, consulting closely with his or her pre-dental adviser on specific courses.

The dental school accepts no more than 50 first year students. The selection process is very competitive. Applicants are considered for admission on the basis of:

1. Overall grade point average.
2. American Dental Association Dental Admissions Test (DAT) scores,
3. Personal interview, and
4. Recommendation of the adviser.

BOARD'S EXHIBIT 159

USMmm!
UNIVERSITY OF SOUTHERN MISSISSIPPI
MINORITY REPORT
Volume III, Number 1
Maurice Singleton, Editor

[Photo Omitted]

Homecoming Queen Jacqueline Kay Redd accepts bouquet of roses from President Aubrey Lucas.

USM Top Ten Campus Beauty

Cynthia Walker, of Columbia, Mississippi was recently selected as one of USM's Top Ten Campus Beauties. Miss Walker, a graduate of Columbia High School, is a senior majoring in speech pathology. After graduation she plans to work towards a master's degree in that area. Cynthia is an active member of the Afro-American Cultural Society, the Student Speech and Hearing Association, and the Southern Style.

Dates To Remember

March 15, 1981 ..... Financial Aid Preference Deadline
March & April, 1981 .... Band and Dixie Darling Tryouts
April 10, 1981 ..... Spring Roundup
May 1, 1981 ..... Springboard Deadline
June 1, 1981 ..... Summer Semester Orientation
July 1981 ..... Mini-Quarter

[Photo Omitted]

Cynthia Walker

[Photo Omitted]

Maurine, Charles, and Jacqueline

Regional Spotlight

GULFPORT—Charles Curry is president of the Afro-American Cultural Society. He was instrumental in the record voter turnout in the recent Associated Student Body elections in which five black students were elected, including the first black homecoming queen at USM. A junior accounting major, Charles is a Special Projects Officer in the Army ROTC.

MERIDIAN—Maurine Knighton is vice-president of the Afro-American Cultural Society. A senior advertising major, Maurine worked with nationally known entertainers and gained professional experience while she participated in a summer internship with Lee King Productions in Jackson.

JACKSON—Sammy Winder is the leading scorer in college football, averaging 10.9 points per game. A 1978 "walk on," the USM tailback played high school football at Madison Ridgeland. Winder is a junior majoring in athletic administration.

BRANDON—Jacqueline Kay Redd is the reigning homecoming queen at USM. In a record voter turnout, she became the first black homecoming queen in USM's 67-year history. A senior computer science major, Jacqueline is the ASB associate director and a member of numerous organizations, including the Afro-American Cultural Society, Arnold Air Society, Southern Style, and the AFROTC Lecturing Team.

USM Graduate On The Move

Michael Marks is the director of The Company, a 16-member, traveling song and dance revue that he created at Lumberton High School.

Marks has carried The Company to high schools and colleges across the state, performing songs written by himself as well as hit songs such as Xanadu by Olivia Newton-John and Michael Jackson's Rock With You. He now plays keyboard accompaniment and directs the group's choreography.

He has been working in the Lumberton Line School District under a federal program, the Emergency School Aid Act, since September 1978. The purpose of the program is to bring members of the majority and minority races into a common arena to interact.

Marks is a 1977 graduate of USM's Honors College where he received his degree in Speech Communications. At USM he was a member of The Pride (marching band), Kappa Kappa Psi band fraternity and Omega Psi Phi. He was active in various entertainment groups, namely, The Barbershop Quartet which won first place in the 1978 Panhellenic Talent Show.

[Photo Omitted]

Michael Marks

[Photo Omitted]

Sammy Winder
Leads Nation In Scoring

[Photo Omitted]

Reggie Collier
Golden Eagle Quarterback

Quarterback Reggie Collier Leads Golden Eagles To Another Winning Season

Quarterback Reggie Collier led USM to its winningest season since 1961 and its third state championship in four years, defeating both Ole Miss and Mississippi State.

The Eagles, with an 8-3 regular season record, traveled to Shreveport, Louisiana, December 13 and defeated a high-rated McNeese State in the Independence Bowl.

The sophomore signal-caller compiled an impressive 1732 total yards for the season. Collier passed for 1268 yards and rushed for 464 more yards and two touchdowns.

A native of Biloxi, Collier graduated from D'Iberville High and was named MVP in the Mississippi High School All-Star Game. Collier's major is business administration.

Joe Dawson Returns As Basketball Leader

Junior Joe Dawson is the key Eagle returning from last year's 17-10 squad.

Dawson and his teammates will be trying to improve on last year's record, which many felt was only a win away from the prestigious, postseason National Invitational Tournament (NIT).

Nicknamed "Awesome Dawson" by his fraternity brothers, the 6'5" Tuscaloosa, Alabama native averaged 18.2 points per game and 10.6 rebounds, both tops for the Eagles in 1980.

Majoring in computer science, Dawson is a dean's list student and a member of Omega Psi Phi Fraternity.

Joining Joe on USM's 1980-81 squad are seniors Donald Stinchcomb, Eddie Jiles, and returning center Ronald Jackson. Freshmen Edgar Eason and Curtis Green are expected to make immediate contributions.

[Photo Omitted]
Joe Dawson

If you have questions about admissions or financial aid, please call us at (601) 266-7111. In Mississippi dial toll free 1-800-222-1604.

SPRING ROUNDUP

High School Seniors and Junior College Students

APRIL 10

[Photo Omitted]
Dr. Roderick Burl Posey

Dr. Roderick Burl Posey is an assistant professor in the Department of Professional Accounting. He has been employed at USM since August, 1979.

He completed his bachelor's and Master's degrees at USM, receiving prestigious grants and scholarships, including the American Institute of CPA Grant; the Peat Marwick, Mitchell, and Company Scholarship; and the Master's Fellowship.

A recipient of the Arthur Andersen Grant and the Oklahoma Board of Regents Doctoral Fellowship, Posey received his doctorate from Oklahoma State University.

He is married to Eula Dawson, and they have two daughters, Tarasha Lachelle and Jannelle Lynette.

Need Financial Aid?

Contact:
William Fron, Director
Southern Station, Box 5101
Hattiesburg, Mississippi 39401
Area Code (601) 266-4257

The Office of Financial Aid provides assistance to applicants on the basis of their eligibility and to the extent that funds are available. While eligibility for some programs is based on "justified need" or family income, eligibility for other programs is based on academic achievement and scholastic aptitude. The basic types of aid are loans, grants, part-time work, and scholarships.

Outstanding Black Alumni

ROGERS JOSEPH DRUHET, III was presented The Minority Law Student in the Country Award in New York in June, 1980. A graduate of USM's Honors College, Druhet was named to Who's Who and was a co-founder of Nu Eta Chapter of Omega Psi Phi Fraternity at USM.

JESSIE HAYNES McCOY is the Public Relations Director at a major university in the state. She received her Bachelor of Science Degree in journalism from USM in 1976.

FRED COOK is playing in his seventh year as a defensive end for the Baltimore Colts of the National Football League. Cook is a former Mr. USM.

PHYLLIS QUALLS-BROOKS is the Public Affairs Director at WJTV in Jackson. She is also host of two programs, FOCUS and Community Contact, for the CBS affiliate station. She received her Bachelor of Fine Arts Degree in theatre in 1973 and was a member of USM's famous Dixie Darlings.

ERIC LYNN PORTER is a program analyst for Honeywell Information Systems in Los Angeles, California. He is a former president of Omega Psi Phi Fraternity at USM. Porter received his Bachelor of Science Degree in computer science in 1980.

JUANITA SIMMS McLEOD is a speech pathologist and has a private practice in Hattiesburg. In her practice, she does testing, therapy, and workshops across the state. Ms. McLeod received both the Bachelor of Science and the Master's degrees at USM.

Admission Info

We're thinking about you at USM and want to remind you about the important steps you need to take for admissions.

1. Fill out the application for admissions and return it to us.
2. High school students request that your ACT score and high school transcript be sent to USM.
3. Transfer students request that your transcripts from all colleges attended be sent to USM.

USM-Minority Report, 1981
published annually by
High School and Junior College Relations

Billie P. Allen, Director
Maurice Singleton, Counselor
Margaret O'Neil, Counselor
Mittie Nimocks, Counselor
Margie Putnam, Counselor
Jeannie Deen, Assistant Director

[Mailer Omitted]

BOARD'S EXHIBIT 161

USM
UNIVERSITY OF SOUTHERN MISSISSIPPI

. . . for all the reasons you go to college.

USM
APPLY CAREFULLY

Although you'll find that the application process is similar at most schools, it is very important to check each school's admission procedure carefully. It's even worth the extra time to make up a checklist for each of the schools in which you're interested. As for USM, here's the way to apply:

1. Submit our application form to the Office of Admissions.
2. Send your ACT scores to the Office of Admissions. You may have your high school guidance counselor submit these records for you.
3. Have your official high school transcript, reflecting your date of graduation, sent to the Office of Admissions.

Some guidance counselors will take your completed application form, your transcript and ACT scores and submit your application for you. Incidentally, you do need to know the guidance procedure at your school as it may differ from others.

As soon as we receive your application, we'll process it and notify you of your status.

USM also offers an alternative way to apply. And it doesn't even require making application. Here's what you do.

1. List USM as your first, second or third choice on your ACT profile.
2. Make a composite score of 15 or higher on your ACT.

USM will receive your test score automatically and will notify you of tentative approval for admission. Final confirmation will be made after you graduate and notify us that you intend to come to the USM Mini-Quarter (more about that later).

EARLY ADMISSIONS AND SPRINGBOARD

As a junior, there are two other programs you should be aware of if you are planning to attend USM. The first is our Early Admissions program. If you make your decision before graduating from high school, you can be assured of early admission if you meet these qualifications:

1. Achieve an exceptional academic record on at least 15 units at an accredited high school.
2. Be recommended by your high school principal.
3. Make a composite score of 23 or higher on your ACT.
4. Have a personal interview with the Director of Admissions.

The second program is called **Springboard**. If you are an honors student at your high school you may begin classes at USM the summer before your senior year in high school. Even if you decide not to attend USM, the college-level credits you earn with us will be accepted at any college or university.

ADMISSION REQUIREMENTS FOR ALL ENTERING FRESHMEN

Beginning with the fall term of 1986, all entering freshmen students must submit an official high school transcript which states the date of graduation and which indicates credit in the following high school units in grades 9-12:

Subject	Units
English	4 – All must require substantial writing components.
Mathematics	3 – Algebra I, Geometry, and Algebra II.
Sciences	3 – Choose from Biology, Avanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of those chosen must be laboratory based.
Social Sciences	2½ – Must include United States History and American Government.
Required Elective	1 – Choose from a foreign language or mathematics (above Algebra II) or a science (chosen from the science courses listed above)

It is also recommended that students pursue two units of foreign languages, take a mathematics course during their senior year, take a computer science course, and gain a level of typing proficiency.

A minimum ACT Assessment composite score of 15 is required for admission.

Any student with an ACT Assessment composite score of 24 or above is exempt from the Board's high school units requirement.

Any student with less than the composite score of 24 who has a deficiency in the required high school units may

be exempt from an area of deficiency by having an ACT Assessment subtest score of at least 18 on the appropriate subtest. This option is not available for any student with more than one deficiency.

BOARD'S EXHIBIT 162

HIGHLIGHTS OF THE ACT TECHNICAL REPORT

THE AMERICAN COLLEGE TESTING PROGRAM

HIGHLIGHTS OF THE ACT TECHNICAL REPORT

The American College Testing Program (ACT) is dedicated to the enrichment of education. It was founded as a public trust and operates as a nonprofit corporation governed by elected educational representatives from individual states or regions, and by a Board of Trustees.

A fundamental goal of ACT is to exercise educational leadership through guidance-oriented assessment and research services in order to (1) assist in the identification and solution of educational problems and (2) communicate to the general and professional publics knowledge and ideas about education.

The chief beneficiaries of ACT's services are students, secondary schools, institutions of postsecondary education, and educational researchers.

Prepared by the Research and Development Division
The American College Testing Program

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For additional copies write:
ACT Publications, P.O. Box 168, Iowa City, Iowa 52240

(Can also be ordered as part of a boxed set containing in addition Volumes One and Two of *Assessing Students on the Way to College*. Volume One is *Technical Report for the ACT Assessment* and Volume Two is *College Student Profiles: Norms for the ACT Assessment*. Price of the complete boxed set is $6. Check or money order must accompany request.)

WHY USE EDUCATIONAL ASSESSMENT?

WHAT IS THE PURPOSE OF ASSESSMENT?

WHAT EXACTLY DO TEST SCORES SHOW?

In attempting to answer these very basic questions, this booklet highlights several crucial aspects of educational assessment in general and the ACT Assessment Program in particular.

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HIGHLIGHTS OF THE ACT TECHNICAL REPORT

Introduction

The American College Testing Program is an independent and nonprofit national educational organization. A primary function of the organization is the transmission of information to students, high schools, and colleges during the students' transition from high school to college. This is accomplished largely through the ACT Assessment Program and its central instrument, the ACT Assessment, which includes a Student Profile Section plus a battery of four tests of educational development: English Usage, Mathematics Usage, Social Studies Reading, and Natural Sciences Reading. The ACT Assessment Program is used each year by approximately one million students and over 20,000 educational institutions.

Many different uses of the ACT Assessment Program are discussed and evaluated in depth in *Assessing Students on the Way to College: Technical Report for the ACT Assessment Program.*[1] That volume includes considerable empirical research about the effectiveness of the parts of the ACT Assessment for various educational uses. This booklet, which is composed of highlights from that larger volume, includes brief information on (1) the uses of standardized information, (2) the description of the ACT Assessment Program, (3) reliability and validity of information collected through the ACT Assessment, and (4) the fairness of uses of ACT as well as other educational assessment information.

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[1] Volume One of a 2-volume set entitled *Assessing Students on the Way to College*. The 2-volume set may be purchased for $6.00 by writing to ACT Publications, P.O. Box 168, Iowa City, Iowa 52240.

Some Uses of Standardized Information

A broad range of information is collected through administration of the ACT Assessment for use as students cross the bridge from secondary school into the expanding and increasingly complex field of higher education. Among the most important areas within that broad range of information is the assessment of general educational development which is reported on a nationally standardized basis. Because measurement of academic achievement yields data for making many important educational decisions, several common uses of such data are surveyed.

Status Report on Student Educational Development

Education in the areas of English, mathematics, social studies, and natural sciences is one of the central functions of high schools and colleges. Thus, at the transition from high school to college it is reasonable to take stock of student educational progress is these important areas. What students have learned in these academic areas is important to them, their parents, their high schools, and the colleges which they wish to attend. Because the ACT Assessment provides information on student educational development in these four important subject matter fields of high school instruction, it supplies a highly relevant status report of student school achievement.

Common Information on Educational Status

Suppose Marsha Edwards attended a high school with an excellent academic program but ranked only near the middle of her high school class. On the other hand, suppose Jonathan Marshall attended a high school with an unimpressive program and ranked near the top of his class. Both Marsha and Jonathan applied to State Univer-

sity which has a rather rigorous academic program. Several questions might be of concern to Marsha and Jonathan and to State University. Does the excellence of Marsha's high school program indicate that she has had adequate preparation for State University's program and the poorer high school program experienced by Jonathan indicate that he is inadequately prepared? Or does Jonathan's high standing in his class indicate adequacy and Marsha's moderate standing inadequacy? Faced with these types of questions, students and colleges need information that is the same for all students. It is this kind of important uniform information which the ACT Assessment provides. Given their test scores, Marsha may show that she is prepared for State University in spite of her rank in class and Jonathan may give evidence of his satisfactory preparation even though he attended a poor high school. In both cases, the test scores provide important uniform information to supplement the high school record for educational decisions by students and colleges.

Educational Information for Student Placement

Not all college freshmen are ready to begin college instruction at the same level in all instructional domains. One may have a mathematics background sufficient to begin college instruction in calculus. Another may have had poorer high school mathematics courses and therefore need college algebra. Yet a third may enter a field of study requiring mathematics at a level which he/she has already achieved in high school. The placement of students in appropriate college coursework is a complex task made difficult by the variance in quality and scope of high school instruction. Information about educational development from the ACT Assessment again can assist students and colleges in making these important placement decisions.

Base Line Data on Students for Institutional Research

Colleges are continually confronted with questions about the characteristics of their student body from their faculty, governing boards, and state and federal governments. They are asked to describe how their entering students differ from students in previous years, how they change while in college, and how much they are learning. The answers to these and similar questions require comparable entry data for all students. The variety of information collected through the ACT Assessment satisfies this need for base line data for many institutional research questions.

Prediction of Academic Performance

Informal predictions are made daily. For example, a person looks out the window to decide if it is likely to rain. Using some predictor variables (e.g., the appearance of the clouds, the feeling in his bones), the person makes a prediction. Given a prediction of rain, at least three types of decisions can be made in an attempt to avoid getting wet: (1) to stay home, thus completely avoiding the possibility of getting wet; (2) to go out, but carry an umbrella; or (3) to ignore the prediction and go out without an umbrella. Note that a person's prediction of rain will be useful only if similar predictions have frequently been correct in the past, that is, if the predictor variables are actually related to the outcome, rain. Most people's prediction of rain is at least good enough that they will rarely ignore the possibility of rain if they see dark threatening clouds.

Predictions in education operate in a similar fashion. While dark threatening clouds may be predictive of rain, in education high school grades and scores on standardized tests of eduational development are known to be

among the best predictors of college academic success. When these predictors suggest the possibility of poor academic performance at a college, several courses of action are open to the college with obvious parallel options for the student. First, the college may protect both the student and itself from the consequences of possible failure by not admitting him/her (completely avoiding the possibility of getting wet). Colleges with limited enrollment and curricula at a specific educational level are those most likely to be involved in this type of decision. Other colleges with more flexible enrollment policies and curricula may make the second decision: to admit the student but provide some assistance in an effort to avoid failure (to carry an umbrella). For example, judgments can be made about an appropriate course of study, where to begin in that course of study, and how much assistance will be needed to assure success. However, just as it makes little sense to ignore the gathering storm clouds, few colleges see any benefits either to themselves or to their students in ignoring predictions of probable performance.

There are several characteristics of the predictions related both to the weather and to educational performance which should be noted. First, predictions are only statements of likely events; they do not predetermine either the weather or academic performance. Second, predictions are useful only if they are based on valid predictors. A person's "feeling in his bones," which may or may not be related to the weather, is useful as a predictor only if it is related to impending weather conditions. Formal validation of predictors is the best way to determine their usefulness. Third, formal statistical prediction procedures have advantages over informal ones. A statistical prediction procedure focuses directly on the outcome of interest and automatically weights the more helpful predictors more heavily, and at the same time discards the

useless ones. Finally, to ignore valid predictions of the weather or of educational outcomes is to ignore information which can be used to help assure more desirable outcomes. Properly used, predictions can make a positive contribution to the enterprise of educating youngsters.

The ACT Assessment Program

The ACT Assessment Program is divided into two major parts:

- Information gathering and reporting services based on the ACT Assessment
- Descriptive and predictive analyses provided through the ACT Research Services

The content of these two parts of the program is described in this section.

The ACT Assessment

The ACT Assessment is an examination-questionnaire by which student information is collected. Because such information is used by students, high schools, and colleges to assist in making a variety of decisions, several types of student information are collected through the four tests of educational development, the self-reported high school grades, and the Student Profile Section of the ACT Assessment. The information collected is analyzed and reported to students, high schools, and colleges for their various uses.

The ACT Assessment derives its meaning not only through statistical relationships with other important variables but also through the educational importance of its content. Knowledge of the content of any assessment is important for appropriate interpretation in the many unique situations in which assessment is used. In the case

of the ACT Assessment, the obvious educational meaning of the content especially contributes to its appropriate use by educators. Because it is important that the content of the ACT Assessment be known to users and that it be educationally meaningful, the next sections describe that content in some detail.

The four tests of the ACT Assessment. The measurement of developed academic abilities has traditionally been an important part of assessment at the high school-to-college transition. In the ACT Assessment, developed academic abilities are assessed in four areas of high school and college curricula: English, mathematics, social studies, and natural sciences. The fundamental idea behind the development of the tests is that the best way to predict success in college is to measure as directly as possible the abilities required in college work. This means that the tasks on the tests must be representative of important scholastic skills. They must be intricate in structure, comprehensive in scope, and representative of educationally significant abilities.

The ACT English Usage Test is a 75-item, 40-minute test which measures students' understanding and use of the basic elements in correct and effective writing: usage, phraseology, style, and organization. The test gives considerably greater weight to clear and effective expression and analysis of forms of expression than to rote recall of rules of grammar. In fact, grammatical rules in a state of transition are carefully avoided. The test consists of several prose passages with certain portions underlined and numbered. For each underlined portion, four alternative responses are given. The student must decide which response is most correct or appropriate. In Table 1, the major content areas are described and a limited sample of the content is illustrated.

The ACT Mathematics Usage Test is a 40-item, 50-minute examination which measures a student's mathematical reasoning ability. The solution of quantitative reasoning problems encountered in many college curricula is emphasized. Although a sampling of the mathematical techniques covered in high school courses is included, the test emphasizes reasoning rather than memorization of formulas, knowledge of techniques, or computational skills. In Table 2 the five types of content are outlined and examples illustrate the format of the test in which questions are followed by five alternative responses.

The ACT Social Studies Reading Test is a 52-item, 35-minute test that measures evaluative reasoning, reading, and problem-solving skills required in social studies. There are two general types of items: the first type is based on reading passages, the second on general background information obtained primarily in high school social studies courses. All items are multiple choice with four alternatives. The items based on the reading passages require more than reading comprehension skills. They require the student to draw inferences and reach conclusions; to extend the thoughts in the passage to a new situation; to make deductions from experimental or graphic data; and to recognize a writer's bias, style, and mode of reasoning. The content areas and sample questions are given in Table 3.

The ACT Natural Sciences Reading Test is a 52-item, 35-minute test that measures the critical reasoning and problem solving skills required in the natural sciences. There are two types of items: the first based on reading passages, the second on information about science. All items are multiple choice with four alternatives. The passages concern a variety of scientific topics and problems, with summaries of procedures and outcomes of experiments among the most common. The items require a

student to interpret and evaluate scientific materials, and in particular to understand the purposes of experiments, the logical relations between experimental hypotheses, and generalizations which can be drawn from the experiments. The content areas in the test are outlined in Table 4, where sample items are also given.

Four student-reported high school grades. As a part of the ACT Assessment, students are asked to report the latest grade in English, mathematics, social studies, and natural sciences obtained prior to the senior year. These student-reported grades are known to be excellent estimates of high school academic achievement and are a valuable supplement to tested achievement for descriptive and predictive purposes.

The Student Profile Section. The Student Profile Section complements the academic sections of the ACT Assessment by providing students the opportunity to express their particular aspirations, needs, talents, and backgrounds. The Student Profile Section is included in the ACT Assessment on the assumption that the quality of plans and decisions is affected by the breadth of information available and that more than academic information is needed.

The content of the Student Profile Section is outlined in Table 5. Basic biographical information includes name, sex, birth date, size of high school class, family income, and racial-ethnic background.[2] The student's educational and vocational plans include choice of program of study, degree goal, planned extracurricular activities, and planned future vocation. Using such items as, "I have performed with a professional music group, composed music,

[2] Questions on family income and racial-ethnic identification are both optional and students not wishing to divulge this information may choose the response, "I do not wish to respond."

been appointed to a student office, entered a debate contest, had poems or articles published," the out-of-class accomplishment scales identify students with outstanding extracurricular accomplishments in the areas of leadership, music, art, writing, science, athletics, work experience, and practical skills. Since the Student Profile Section elicits a broad spectrum of information, it provides both students and colleges descriptions of students useful for planning and decision making.

ACT reporting services. The broad information collected through the ACT Assessment is organized, scored, and anlayzed for reporting in a useful form to students, high schools, and colleges. For purposes of illustration, a sample of the printed report sent to colleges is given in Figure 1.[3] These reports feature the wide variety of information reported, the use of test scores as only one of several important types of information, and the use of the more valid college grade predictions (using test scores and high school grades together) rather than emphasizing either test scores or high school grades by themselves.

[3] Data from the ACT Assessment are also available in magnetic tape or punched card form.

TABLE 1

Content of the ACT English Usage Test

Grammar and punctuation. Punctuation and graphic conventions; usage in agreement; verb forms; use of adjectives, adverbs, and nouns; pronouns and their antecedents. (Proportion of test = .35)

Sentence structure. Relation clauses; parallelism; placement of modifiers; and predication and shifted constructions. (Proportion of test = .25)

Diction. Word choice and idioms; figurative language; and economical writing. (Proportion of test = .35)

Logic and organization. Logical organization of ideas; the elimination of inappropriate ideas and statements; proper wording of transitions; paragraphing; and appropriate conclusions. (Proportion of test = .05)

Sample questions

Although sixty-five years ago, the open range has all but (1)
disappeared, cowboys still herd cattle in the West, still ride horses. And roundups are still held. (2) And ranches, though
fenced, still spread (3) over ranges which were (4) almost as extensive as the holdings of Goodnight and Littlefield and Iliff nearly three-quarters of a century ago. A decade ago there remained near to 1000 (5) ranches of more than 20,000
acres per each ranch (6); more than one-fourth of these—most of them in Texas, New Mexico, and Arizona—containing (7)
more than 100,000 acres.

1 A. NO CHANGE
B. ago, the open range was practically
C. ago the open range to all intents and purposes
D. ago the open range had almost

2 F. NO CHANGE
G. horses. They still hold roundups.
H. horses, roundups are still held.
J. horses, and still hold roundups.

3 A. NO CHANGE
B. fenced still will spread
C. fenced still are spreading
D. fenced, still have spread

4 F. NO CHANGE
G. ranges being
H. ranges, making them
J. ranges

5 A. NO CHANGE
B. nearly a thousand
C. something like 1000
D. in the neighborhood of a thousand

6 F. NO CHANGE
G. in each;
H. each;
J. at each one;

7 A. NO CHANGE
B. and containing
C. contained
D. contain

English Usage Answer Key

1. D
2. J
3. A
4. J
5. B
6. H
7. C

TABLE 2

Content of the ACT Mathematics Usage Test

Arithmetic and algebraic reasoning. Word problems about practical situations requiring algebraic and/or arithmetical reasoning in which the student must interpret the question and find an approach to its solution. (Proportion of test = .35)

Arithmetic and algebraic operations. Explicitly described operations to be completed such as manipulation of fractions, decimals, signed numbers, and polynomials. (Proportion of test = .15)

Advanced algebra. Dependence and variation of quantities related by formulas; arithmetical and geometric series; solution of simultaneous equations; inequalities; roots of equations; factoring polynomials; etc. (Proportion of test = .20)

Geometry. Mensuration of lines and plane surface; properties of polygons and circles; loci; Pythagorean theorem; etc. (Proportion of test = .20)

Miscellaneous. Set theory; probability; logic; properties of numbers; and bases of number systems. (Proportion of test = .10)

Sample questions

1. Two wells pump oil continuously. One produces 4000 barrels of oil per day, which is 33⅓ percent more than the other well produces. How many barrels of oil are produced daily by the two wells?

   A. 5333⅓
   B. 6666⅔
   C. 7000
   D. 8333⅓
   E. 9000

2. If a car travels a miles in b minutes, how many minutes will it take to travel c miles?

F. cb/a
G. c/a
H. ab/c
J. c/b
K. c/ab

3. A boy bought three pencils at 5 cents each, a 10-cent eraser, and a 15-cent bottle of ink. If he gave the clerk a dollar bill, how much change should he receive?

A. 25¢
B. 30¢
C. 40¢
D. 50¢
E. None of these

4. What is the product of $2a$ and $(b+c)$?

F. $2ab+2ac$
G. $2ab+c$
H. $2abc$
J. $2b+ac$
K. None of these

5. A rectangle is five times as long as it is wide. The perimeter of the rectangle is 72 feet. How many feet wide is the rectangle?

A. 6
B. 10
C. 12
D. 18
E. None of these

6. Sides AB and AC of triangle ABC are equal. If angle B is 70 degrees, how many degrees are there in angle A?

F. 40
G. 50
H. 60
J. 70
K. 110

7. What values of x and y satisfy the following simultaneous equations?

$3y=x+4$
$6x+2y=16$

A. $x=-2; y=2$
B. $x=2; y=-2$
C. $x=-2; y=-2$
D. $x=2; y=2$
E. None of these

Mathematics Answer Key

1. C
2. F
3. E
4. F
5. A
6. F
7. D

TABLE 3

Content of the ACT Social Studies Reading Test

The ACT Social Studies Reading Test contains both inference items based on reading passages and information items on background knowledge in three major areas of social studies in the proportions specified below.

Proportional Distribution of Items

	Inference Items	Information Items	Total
European and Ancient History	.14	.06	.20
Government and American History	.28	.12	.40
Current Social Issues, Sociology, Economics, etc.	.28	.12	.40
Total	.70	.30	1.00

Sample Inference Items

Certain similarities between the civilizations of ancient Peruvian Indians and the civilizations of the inhabitants of some Pacific islands led Thor Heyerdahl to believe that possibly in the past the Peruvians had migrated across the Pacific and established homes on the islands. Peruvian Indian relics depicting large rafts of balsa wood indicate the manner in which this migration might have taken place. In order to see whether the journey was possible in such a vessel, Heyerdahl had a raft constructed of balsa logs and rope, reproducing as nearly as possible the original construction used by the Indians. The raft was equipped with a generous supply of canned and fresh food and water. A

short-wave radio was also included. With a crew of six men, the raft set out from Peru in April 1947, and began to drift away in the Humboldt Current. The raft was wrecked on an uninhabited island far out in the Pacific 101 days later, and the crew made their way to shore safely. A week later they were found by Polynesians who arrived in canoes from a nearby island.

1. The raft was constructed of balsa logs and rope because
   - A. Peru is an underdeveloped country with few resources
   - B. it was necessary to show that Indians could have made the trip
   - C. the native workers were not familiar with advanced designs
   - D. more rugged materials were not available at the time

2. What effect did the carrying of a short-wave radio have on the validity of the experiment?
   - F. It tended to increase the validity, because the added weight made the trip more hazardous.
   - G. It tended to invalidate the experiment, because it made the crew feel safer.
   - H. It tended to invalidate the experiment, because the ancient Indians could not have had radios.
   - J. It had no effect on the validity of the experiment.

Sample Information Item

3. The main purpose of the Bill of Rights is to
   A. prevent presidents from telling states what to do
   B. enlarge the scope of the powers of the federal government
   C. lessen the power of the Supreme Court to declare acts of Congress unconstitutional
   D. limit the power of the federal government to abuse individual freedom

Social Studies Answer Key

1. B
2. J
3. D

TABLE 4

Content of the ACT Natural Sciences Reading Test

The ACT Natural Sciences Reading Test contains both inference items based on reading passages and information items on background knowledge in three major areas of natural sciences in the proportions specified below.

Proportional Distribution of Items

	Inference Items	Information Items	Total
Biology	.36	.12	.48
Chemistry	.17	.06	.23
Physics, Geology, Astronomy and General Science	.17	.12	.29
Total	.70	.30	1.00

Sample Information Item

1. The emergence of new strains of houseflies capable of withstanding the poisonous effects of the chemical DDT is an example of
   A. adaptation
   B. the Mendelian law
   C. implementation
   D. regeneration

Sample Inference Items

When a mosquito feeds on a mammalian host, a wheal commonly develops around the puncture site. In man, wheal formation is usually accompanied by inflammation

and irritaton. Controlled experiments with rabbits have shown that the reaction to mosquito bites is of a hypersensitive type, and therefore it occurs in response to the injection of an antigen, a substance which stimulates the production of an antibody when injected into the body.

Aedes stimulans (Walker) is a comparatively large species of mosquito. The female of this species was selected for the following experiment in which the main salivary duct leading to the hypopharynx was to be severed.

Before the salivary duct was cut, the mosquito was anesthetized with carbon dioxide and placed on its back on a slide. A thin tungsten needle, sharpened to a fine point, was used to make a small incision in the anterior region of the neck, exposing the salivary duct. This duct was then cut with a sharpened sliver of tungsten wire. The mosquito was then transferred to a vial and supplied with sucrose (sugar) solution. Mortality rates were high, undoubtedly because of handling techniques and also because of the variation in age of the mosquitos.

After a recovery period of 24 hours, an operated mosquito and an unoperated mosquito were offered a blood meal from the arm of a human subject. This procedure was repeated with a number of pairs of mosquitoes. Many of the surviving operated mosquitoes did not attempt to bite. However, twelve individuals did bite and became fully engorged with blood. The bites of females whose salivary ducts had been cut failed, in every case, to produce a wheal or an irritation. The bites of the other mosquitoes in an adjacent area on the arm produced the usual wheal.

2. The reason for offering a blood meal to unoperated mosquitoes was to
   F. goad the still-groggy operated mosquitoes into feeding
   G. provide experimental controls
   H. make sure that normal mosquitoes could pierce the skin of the human subjects
   J. provide a source of antigen for future experiments

3. The purpose of this experiment was to determine
   A. if a mosquito bite, unaccompanied by salivary secretions, would produce the characteristic symptoms in a human
   B. how many mosquitoes with severed salivary ducts would bit a human
   C. how many mosquitoes would survive for 24 hours after such an operation
   D. whether a bite from a mosquito fed on sugar would produce a wheal or an irritation

Natural Sciences Answer Key

1. A
2. G
3. A

TABLE 5

Content of the ACT Student Profile Section

Biographical Information
- Name
- Sex
- Birth date
- Social Security Number
- Mailing address
- Family income
- Racial-ethnic background
- Size of high school class
- Current educational level
- Participation in high school honor courses

Educational-Vocational Plans
- Program of study
- Planned vocation
- Degree goal
- Extracurricular plans (music, student government, debate, etc.)
- Interest in special advanced programs
- Full- or part-time enrollment

Out-of-Class Accomplishments
- Athletics
- Work experience
- Practical skills
- Leadership
- Music
- Art
- Writing
- Science

Factors Influencing College Choice
- Primary advisors (parents, teachers, etc.)
- Characteristics of the college (faculty, standards, size, location, etc.)

Special Needs
- Financial aid
- Employment
- Educational needs (reading, math, study skills, etc.)

BOARD'S EXHIBIT 163

The American College Testing Program

STATEMENT OF POLICIES

Use of ACT Data
Privacy
Responsibilities to Program Participants

STATEMENT OF POLICIES

Contents

Use of ACT Data 1
Privacy of ACT Information and Data Files 12
Responsibilities to Program Participants 20

Introduction

The American College Testing Program (ACT) is a nonprofit educational service organization that provides a wide variety of services in such areas as testing, financial need analysis, information processing, and research to the education community.

From its beginning, ACT has been convinced that testing and other ways of gathering, processing, and disseminating information have great potential for enhancing the educational process. We have been equally sensitive to the responsibilities imposed on us by our involvement in the lives of students and institutions.

In administering more than 50 educational programs and services, ACT operates within a framework of policies and procedures designed to guarantee maximum service to

users and to protect their rights. These policies and procedures were recently subjected to a comprehensive review that drew on surveys of users, consultation with experts, and the expertise of ACT's own staff. The year-long study led to refinements in ACT's comprehensive three-part policy that covers responsible uses of test scores and other data, privacy of data, and the responsibilities of those who provide and use ACT's programs and services.

We believe it is important for students, educators, and others concerned about education to understand the premises on which our programs and services are based. This booklet contains statements of the policies that guide ACT in the planning and operation of our programs and services.

In the statements in this booklet, "program participants" refers to students; "program users" refers either to individuals or to educational institutions.

June 1979

* * * * *

B. Selection and/or Entrance

1. *Responsibilities of ACT*

   a ACT assists colleges in the proper use of ACT information for selection or admission decisions by providing appropriate guidelines for such uses through workshops conducted by the ACT staff and through various user publications.

   b ACT assists colleges in studying the effects of various admission/selection decision rules for subgroups of the applicant population (e.g., male/female, adult, minority) by providing normative data for pertinent subgroups.

c ACT test score data should not be used as the sole criterion for admission/selection decisions. ACT encourages colleges to consider other measures of academic ability (e.g., high school grades or rank in class), as well as various noncognitive factors (e.g., interests, special skills, experiences) in the admission/selection decision.

d Regardless of the selection procedures used by colleges, those procedures should be systematically validated by the colleges. ACT helps colleges to conduct such validity studies on a regular basis through its Standard and Basic Research Services.

e ACT ensures the privacy of the students involved in the selection process by releasing data only to schools/personnel identified by the examinees as legitimate recipients of the data.

2. *Guidelines for Institutions*

a Colleges should maintain a qualified admission staff whose members are trained and experienced in the proper use of test information for selection purposes.

b Colleges should maintain the confidentiality of student information provided to them by ACT.

c Colleges should provide students with a general description of the selection procedures they employ; those procedures should include consideration of many aspects of the student's capabilities and experiences, including achievement or ability factors, relevant experiences, and noncognitive factors.

d Colleges should validate the selection process regularly to verify the appropriateness of the selection criteria being employed. Where possible, the validation process should include the investigation of differential validity for subgroups of the examinee population (e.g., male/female, minority/non-minority).

e The purposes of the ACT tests and assessment devices are clearly stated in technical manuals and user publications. If a college wishes to use a test or instrument for a purpose other than those for which the instrument was developed (e.g., use of the ACT Assessment Program test data as an admission requirement for an upper-level or professional program), the college should conduct validity studies to establish the relationship of the test scores and admission guidelines to an appropriate criterion variable(s).

C Student Recruitment

1. *Responsibilities of ACT*

a Colleges sometimes use data from ACT programs and services in recruiting students. Specific sources of recruitment data may include a simplified approach to the admission process, in which students may apply for admission to colleges through the ACT Assessment Program, and the Educational Opportunity Service. In various publications, ACT indicates that data provided by the students to ACT may be used (with student permission) by colleges to contact them for recruitment purposes.

b Each year ACT collects descriptive information from participating colleges for the purpose of informing students of the institutional characteristics (physical and educational), student characteristics, specific programs, costs, and admission criteria of the colleges. These data, disseminated to students through ACT's *College Planning/Search Book*, Educational Opportunity Service, and ACT Assessment Student Profile Report, are updated annually so that students have access to the most recent available information about the colleges.

2. *Guidelines for Institutions*

a Colleges using ACT services and data to recruit students should indicate to students the source of the information from which the student contact was made.

b In recruiting students, colleges should use ACT data only to contact students who have indicated interest in the college (e.g., directed ACT to send a score report to the college) or who have characteristics and/or interests related to programs provided by the college.

c In recruiting students, colleges should use ACT data along with all other pertinent information to ensure a reasonable match between students' level of educational development and the requirements of the college; students who are unlikely to succeed at a college without special educational intervention should not be recruited unless such intervention is planned.

d Colleges should provide students with enough accurate information about admission requirements and academic standards to enable them to evaluate their own probability of admission and academic success.

e Information which can be used for recruiting purposes and which is provided to a college by ACT should be maintained and used in the strictest confidence by the college.

f Most colleges provide ACT with descriptive information, which ACT communicates to students through the *College Planning/Search Book*, the Educational Opportunity Service, and the ACT Assessment Student Profile Report. The colleges are responsible for the accuracy and validity of the information reported.

* * * * *

BOARD'S EXHIBIT 173

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

COMPOSITE

EIGHT STATE UNIVERSITIES

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	2	1	0	1	4
33	6	9	7	4	3	29
32	17	8	21	17	12	75
31	28	28	35	42	43	176
30	57	59	55	63	70	304
29	98	92	84	81	116	471
28	134	143	141	170	168	756
27	179	176	125	162	256	898
26	221	190	182	236	202	1031
25	278	239	229	244	282	1272
24	308	248	244	269	276	1345
23	310	335	286	340	303	1574
22	382	310	292	324	341	1649
21	391	401	321	400	367	1880
20	382	397	350	362	403	1894
19	433	387	372	388	387	1967
18	467	397	456	408	386	2114
17	480	415	475	414	387	2171

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

COMPOSITE

EIGHT STATE UNIVERSITIES

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	551	470	519	455	420	2415
15	538	565	523	510	438	2574
14	237	264	228	227	228	1184
13	254	254	255	229	232	1224
12	260	267	282	286	193	1288
11	316	308	294	251	186	1355
10	206	368	304	334	181	1393
9	143	176	169	260	127	875
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	1	1
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	6676	6508	6250	6476	6089	31919
MEAN	18.64	18.26	18.19	18.43	19.27	18.55

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

ALCORN STATE UNIVERSITY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	0	0	0	0	0
33	0	0	0	0	0	0
32	0	0	0	0	0	0
31	0	0	0	0	0	0
30	0	0	0	0	0	0
29	0	1	0	0	0	1
28	1	0	1	0	0	2
27	1	0	0	0	1	2
26	1	3	2	0	3	9
25	4	1	1	0	3	9
24	3	2	3	3	4	15
23	6	8	6	5	4	29
22	4	6	6	7	13	36
21	10	12	9	14	22	67
20	6	7	10	18	6	47
19	12	13	18	18	14	75
18	16	13	19	18	28	94
17	18	18	27	19	24	106

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN – continued

ALCORN STATE UNIVERSITY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	40	24	29	24	37	154
15	39	42	34	38	42	195
14	43	38	38	31	22	172
13	60	54	48	30	30	222
12	46	48	39	39	32	204
11	67	66	37	47	50	267
10	31	42	33	86	39	231
9	20	17	51	103	43	234
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	0	0
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	428	415	411	500	417	2171
MEAN	14.06	13.97	14.05	13.07	14.50	13.90

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

DELTA STATE UNIVERSITY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	0	0	0	0	0
33	0	0	0	0	0	0
32	1	0	0	0	1	2
31	0	0	1	0	0	1
30	3	2	2	0	0	7
29	5	3	5	2	5	20
28	3	6	4	6	4	23
27	15	15	9	6	10	55
26	15	9	7	14	16	61
25	19	15	18	14	23	89
24	17	10	7	11	15	60
23	19	27	18	31	14	109
22	35	27	24	29	23	138
21	22	34	26	30	14	126
20	24	28	27	22	25	126
19	27	25	35	34	38	159
18	30	41	34	36	32	173
17	42	39	35	36	35	187

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN – continued

DELTA STATE UNIVERSITIY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	63	42	47	37	33	222
15	42	60	59	33	47	241
14	8	16	15	8	15	62
13	6	9	9	12	7	43
12	12	8	7	7	5	39
11	6	5	5	10	3	29
10	5	2	6	4	3	20
9	4	0	1	0	0	5
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	0	0
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	423	423	401	382	368	1997
MEAN	19.08	18.96	18.61	19.06	19.24	18.99

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

JACKSON STATE UNIVERSITY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	0	0	0	0	0
33	0	0	0	0	0	0
32	0	0	0	0	0	0
31	0	0	0	0	0	0
30	0	0	0	0	0	0
29	0	1	0	1	1	3
28	3	3	3	1	1	11
27	1	1	2	2	2	8
26	2	8	3	4	10	27
25	10	4	16	3	13	46
24	13	12	9	17	16	67
23	18	15	19	29	28	109
22	28	14	17	26	31	116
21	26	29	40	38	38	171
20	26	26	22	30	37	141
19	38	29	30	43	35	175
18	31	39	59	40	49	218
17	41	29	40	38	44	192

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BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN – continued

JACKSON STATE UNIVERSITIY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	54	38	42	43	50	227
15	52	52	64	59	76	303
14	61	52	64	73	93	343
13	81	61	97	92	100	431
12	122	95	117	138	90	562
11	158	134	153	114	93	652
10	70	149	145	151	106	621
9	62	80	61	107	68	378
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	1	1
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	897	871	1003	1049	981	4801
MEAN	14.28	13.77	14.07	14.01	14.84	14.20

1163

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

MISISSIPPI STATE UNIVERSITY

MPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	0	1	0	0	1
33	3	5	2	1	1	12
32	6	6	8	8	5	33
31	15	14	18	22	24	93
30	22	25	19	24	41	131
29	44	43	27	38	54	206
28	52	69	55	74	77	327
27	74	57	37	67	115	350
26	73	73	62	87	77	372
25	97	76	88	114	107	482
24	121	93	86	84	92	476
23	104	106	88	94	95	487
22	112	100	82	89	106	489
21	141	128	81	116	104	570
20	108	107	102	84	120	521
19	129	99	103	94	100	525
18	128	92	113	90	95	518
17	124	102	118	81	87	512

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN – continued

MISSISSIPPI STATE UNIVERSITIY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	122	91	128	114	94	549
15	127	104	121	114	94	560
14	57	55	33	31	31	207
13	37	45	37	21	36	176
12	10	20	25	25	17	97
11	3	4	3	5	1	16
10	7	10	10	4	1	32
9	8	10	9	6	0	33
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	0	0
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	1724	1534	1456	1487	1574	7775
MEAN	20.68	20.78	20.31	21.19	21.67	20.93

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

MISSISSIPPI UNIVERSITY FOR WOMEN

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	0	0	0	0	0
33	0	0	1	0	0	1
32	0	1	0	0	0	1
31	0	0	1	2	1	4
30	4	5	2	4	0	12
29	3	5	5	3	4	20
28	5	4	6	4	6	25
27	4	8	6	6	7	31
26	10	7	8	12	9	46
25	11	7	9	8	15	50
24	11	17	11	9	10	58
23	6	12	10	9	13	50
22	17	16	7	12	6	58
21	14	14	18	20	15	81
20	14	18	18	19	12	81
19	14	24	9	15	14	76
18	13	17	24	25	13	92
17	21	22	24	18	14	99

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN – continued

MISSISSIPPI UNIVERSITIY FOR WOMEN

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	26	27	23	30	21	127
15	19	38	29	19	8	113
14	0	0	0	0	0	0
13	0	0	0	0	0	0
12	0	0	0	0	0	0
11	0	0	0	0	0	0
10	0	0	0	0	0	0
9	0	0	0	0	0	0
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	0	0
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	192	242	211	212	168	1025
MEAN	20.30	20.00	20.06	20.08	21.03	20.25

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

MISSISSIPPI VALLEY STATE UNIVERSITY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	0	0	0	0	0
33	0	0	0	0	0	0
32	0	0	0	0	0	0
31	0	0	0	0	0	0
30	0	0	0	0	0	0
29	0	0	0	0	0	0
28	0	0	0	0	0	0
27	2	0	0	0	0	2
26	1	1	0	2	1	5
25	1	2	1	1	2	7
24	0	2	1	2	3	8
23	1	6	0	0	14	21
22	0	5	2	5	12	24
21	2	6	5	2	19	34
20	3	16	9	4	24	56
19	5	15	7	9	15	51
18	6	24	17	16	5	68
17	10	23	29	14	13	89

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

MISSISSIPPI VALLEY STATE UNIVERSITY

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	20	32	30	15	18	115
15	24	40	17	16	22	119
14	28	44	28	26	16	142
13	35	45	33	28	20	161
12	39	74	68	45	36	262
11	59	89	83	58	35	324
10	80	154	97	76	31	438
9	41	55	36	37	16	185
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	0	0
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	357	633	463	356	302	2111
MEAN	12.37	12.86	12.72	12.73	15.17	13.06

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

UNIVERSITY OF MISSISSIPPI

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	1	0	0	1	2
33	3	3	2	3	1	12
32	5	1	8	4	5	23
31	8	11	11	8	12	50
30	12	18	21	22	19	92
29	32	22	27	26	38	145
28	42	41	43	48	57	231
27	62	57	40	57	72	288
26	82	53	50	88	55	328
25	93	84	62	71	79	389
24	97	64	69	87	80	397
23	96	80	81	105	76	438
22	115	86	85	96	95	477
21	100	100	75	98	94	467
20	110	105	91	110	95	511
19	127	103	80	93	95	498
18	128	91	92	92	89	492
17	119	80	92	107	85	483

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

UNIVERSITY OF MISSISSIPPI

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	96	101	100	101	75	473
15	110	88	76	98	70	442
14	23	28	23	27	21	122
13	18	23	19	25	16	101
12	25	8	13	16	6	68
11	16	8	7	6	1	38
10	8	4	6	4	1	23
9	8	4	7	3	0	19
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	0	0
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	1532	1264	1180	1395	1238	6609
MEAN	20.59	20.70	20.68	20.83	21.44	20.84

BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN

UNIVERSITY OF SOUTHERN MISSISSIPPI

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	1	0	0	0	1
33	0	1	2	0	1	4
32	5	0	5	5	1	16
31	5	3	4	10	6	28
30	16	9	11	16	10	62
29	14	17	20	11	14	76
28	28	20	29	37	23	137
27	20	38	31	24	49	162
26	37	36	50	29	31	183
25	43	50	34	33	40	200
24	46	48	58	56	56	264
23	60	81	64	67	59	331
22	71	56	69	60	55	311
21	76	78	67	82	61	364
20	91	90	71	75	84	411
19	81	79	90	82	76	408
18	115	80	98	91	75	459
17	105	102	110	101	85	503

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BOARD'S EXHIBIT 173 – (Continued)

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY YEARS, ENTERING FRESHMEN – continued

UNIVERSITIY OF SOUTHERN MISSISSIPPI

COMPOSITE

STANDARD SCORE	*82-83*	*83-84*	*84-85*	*85-86*	*86-87*	*TOTAL*
16	130	115	120	91	92	548
15	125	141	123	133	79	601
14	17	31	27	31	30	136
13	17	17	12	21	23	90
12	6	14	13	16	7	56
11	7	2	6	11	3	29
10	8	2	7	9	0	28
9	3	10	4	4	0	21
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	0	0
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	1123	1126	1125	1095	961	5430
MEAN	19.64	19.55	19.77	19.61	20.12	19.73

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BOARD'S EXHIBIT 183A

ADMISSION STANDARDS

COPIED FROM THE BYLAWS AND POLICIES
AND THE NOVEMBER 21, 1985, APRIL 17,1986,
SEPTEMBER 18, 1986, NOVEMBER 20, 1986,
AND JANUARY 15, 1987, MINUTES
OF THE
BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

ADMISSION

I. Admission to and attendance in all institutions of higher learning under the jurisdiction of this Board is a benefaction of the law, and any person seeking such privilege through attendance at any of the state institutions of higher learning must comply with such conditions as may be imposed by the Board of Trustees. The executive officer of each institution is authorized to admit a student who meets all requirements, or permit a student to continue in attendance at any institution, when in his judgment such student may reasonsably be expected to profit from attendance at the institution and when such attendance may be expected to contributte to the welfare of the institution and the state.

II. Every person seeking to attend a state institution of higher learning in Mississippi must make application according to regulations adopted by the Board of Trustees. Such regulations may be revised or changed by the institution or the Board of Trustees

at any time without notice. Any application submitted must state the admission period sought and may be acted upon for the stated period only and cannot be considered a continuing application. In the event an application is denied or an applicant is not admitted upon said application, a new application is required for subsequent consideration at the same or any later term.

III. The application of a non-resident of the State of Mississippi may be considered or not at the option of the executive officer of the institution. The definitions and conditions governing the resident status of applicants for admission to any of the institutions shall be as follows:

A. *Residence of a minor*
The residence of a person less than twenty-one (21) years of age is that of the father. After the death of the father, the residence of the minor is that of the mother. If the parents are divorced, the residence of the minor is that of the parent who was granted custody by the court; or, if custody was not granted, the residence continues to be that of the father. If both parents are dead, the residence of the minor is that of the last surviving parent at the time of that parent's death, unless the minor lives with a legal guardian of his person, duly appointed by a proper court of Mississippi in which case his residence becomes that of the guardian.

B. *Residence of an adult*
The residence of an adult is that place where he is domiciled, that is, the place where he actually physically resides with the intention of remaining there indefinitely or of returning there permanently when temporarily absent.

C. *Removal of parents from Mississippi*
If the parents of a minor who is enrolled as a student in an institution of higher learning move their legal residence from the State of Mississippi, the minor is immediately classified as a non-resident student.

D. *Twelve months of residence required*
No student may be admitted to any institution of higher learning as a resident of Mississippi unless his residence, as defined hereinabove, has been in the State of Mississippi for a continuous period of at least twelve months immediately preceding his admission.

E. *Non-resident may petition institution for change of residency classification*
A person who enters the State of Mississippi from another state and enters an educational institution is considered a non-resident. Provided, however, that any person who has attained twenty-one (21) years of age and has thereafter actually established residency and resided within the State of Mississippi for twelve (12) consecutive months after attaining twenty-one (21) years of age upon sworn affidavit and other representation, may petition the particular institution for a change in residency classification for the purposes of fees and tuition assessment.

1. The institution may make reasonable inquiry into the validity of the petitoner's claim.
2. Such petition for change of residency must be made on or before the last day a student may register at the particular institution without penalty.

F. *Residence status of a married person*
A married person may claim the residence of his/her spouse.

G. *Children of parents who are members of the faculty or staff of institutions of higher learning*
Children of parents who are members of the faculty or staff of any institution under the jurisdiction of the Board of Trustees may be classified as residents without regard to the residence requirement of twelve (12) months for the purpose of attendance at the institution where their parents are faculty or staff members.

H. *Military personnel assigned an active duty station in Mississippi*
Members of the armed forces on extended active duty and stationed within the State of Mississippi, except those military personnel whose active duty assignment in the State of Mississippi is for educational purposes, may be classified as residents, without regard to the residence requirement of twelve (12) months, for the purpose of attendance of state-supported institutions of higher learning and junior colleges of the State of Mississippi. Resident status of such military personnel who are not legal residents of Mississippi, as defined under "Residence of an adult" in paragraph III, B above, shall terminate upon their reassignment for duty in the continental United States outside the State of Mississippi.

I. *Children of military personnel*
Resident status of children of members of the Armed Forces on extended active duty shall be

that of the military parent for the purpose of attending state-supported institutions of higher learning and junior colleges of the State of Mississippi during the time that their military parents are stationed within the State of Mississippi and shall be continued through the time that military parents are stationed in an overseas area with last duty assignment within the State of Mississippi, excepting temporary training assignments en route from Mississippi. Resident status of minor children shall terminate upon reassignment under Permanent Change of Station Orders of the military parents for duty in the continental United States outside the State of Mississippi, excepting temporary training assignments en route from Mississippi.

J. *Certification of residence of military personnel*
A military person on active duty stationed in Mississippi who wishes to avail himself or his dependents of the provisions of paragraph H, must submit a certificate from his military organization showing the name of the military member; the name of the dependent, if for a dependent; the name of the organization of assignment and its address (may not be in the letterhead); that the military member will be on active duty stationed in Mississippi on the date of registration at the state-supported institution of higher learning or junior college of the State of Mississippi; that the military member is not on transfer orders; and the signature of the Commanding Officer, the Adjutant, or the Personnel Officer of the unit of assignment with signer's rank and title. A military certificate must be presented to the

registrar of the state-supported institution of higher learning or junior college of the State of Mississippi each semester or tri-semester at (or within ten (10) days prior to) registration each semester for the provisions of paragraph H above hereof to be effective.

IV. *Admission Standards*

A. *All institutions:*

1. All students (including transfers) entering a given public university for the first time and enrolling for academic credit must document proof of immunization for measles and rubella.
   a. Proof of immunization may be documented in the following manner:
      (1) Documentation (month and year) of immunization which was received after the first birthday;
      (2) Positive measles and rubella serology titer with date;
      (3) Physician-documented history of having had measles with date of the disease. History of rubella is not acceptable.
   b. Temporary exceptions – one semester:
      (1) Pregnant women;
      (2) Women suspecting pregnancy;
      (3) Women anticipating pregnancy within three months.
   c. Permanent exceptions:
      (1) Medical disease which will cause a permanent contraindication to immunization;
      (2) All persons born prior to 1957.
2. All entering freshman students must have earned the following high school units in grades 9-12:

Subject	Units
English	4 – All must require substantial writing components.
Mathematics	3 – Algebra I, Geometry, and Algebra II.
Sciences	3 – Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of those chosen must be laboratory based.
Social Sciences	2½ – Even though we assume that elements of American government and United States history are a part of any social science unit, it is the position of the Board of Trustees that all college students shall have a familiarity with American government and United States history. If students have not taken at least a ½ Carnegie unit course in United States history and a ½ Carnegie unit course in American government in high school, they will be required to take a three semester hour credit course in either American government or United States history in the first semester/quarter/session of college enrollment.
Required Elective	1 – Choose from a foreign language or mathematics (above Algebra II) or a science (chosen from the science courses shown above).

It is also recommended that students pursue two units of foreign languages, take a mathematics course during their senior year, take a computer science course, and gain a level of typing proficiency.

3. In addition to existing admission standards concerning high school course requirements which go into effect with the fall 1986 entering class, the permanent policy of deferrals listed below will be permitted. Students who were admitted to the universities with a deferral of admission standards and who failed the deferral course(s) during the first semester of admission can appeal to the faculty appeals committee for re-admission. In order for students to be allowed to appeal, the student must have a 2.0 on a 4.0 scale for all courses other than the failed deferral course(s) taken during the semester.

   a. No more than two deferrals of high school course requirements will be permitted.

   b. *Mathematics* – one deferral, provided that the student takes and passes a Board approved, specially designed course in the field of deferral (Geometry or Algebra) in his first semester/quarter/session. This course cannot be used for credit towards graduation. For students with both a mathematics deficiency and a score below 12 on the mathematics portion of the ACT (350 SAT quantitative),

the student must have taken and passed a Board approved, specially designed course in the field of deferral (Geometry or Algebra) by the end of his first academic year.

c. *Science*—one deferral, provided that the student takes and passes an initial credit biology, chemistry, or physics course in his first semester/quarter/session. The student can take this course for deferral completion only in a discipline in which he has at least one Carnegie unit of credit.

d. *Elective*—one deferral, provided that the student takes and passes an initial credit course in mathematics, biology, chemistry, physics, or foreign languages in his first semester/quarter/session. The student may not use a mathematics course for this deferral if he must use the mathematics deferral. If a science course is used for the elective deferral, the student must have completed at least one Carnegie unit in the discipline selected.

4. Each institutional executive officer may exempt at his discretion up to 40 students per year from the required high school courses.

5. Any student 21 years of age or over who does not have an ACT score or who does

not meet minimum admission requirements as set forth under *Admission Standards*, sections A, B, C, D, E, and F, may register without meeting these requirements. Such students may register for a maximum of twelve (12) semester hours during a semester or a maximum of nine (9) semester hours during a quarter term. Degree student status may be achieved by meeting the regular admission standards (including ACT score) or by completing a minimum of twelve (12) semester hours or nine (9) semester hours on the quarter calendar with a "C" average. The hours earned as a non-degree student may not at any time be counted on the Student Credit Hour Report (formula calculation).

6. Out-of-state students enrolling as first-time entering freshmen must present a minimum Composite ACT score of 15 or a comparable converted score on the Scholastic Aptitude Test (SAT) which will be determined according to the following table for the purpose of establishing eligibility for admission; executive officers at the institutions may waive this requirement for scholarship students.

Conversion Table

Scholastic Aptitude Test Scores to
American College Test Scores*

SAT	ACT	SAT	ACT	SAT	ACT
1550-1600	35	1060-1090	26	750-770	17
1480-1540	34	1020-1050	25	720-740	16
1420-1470	33	980-1010	24	700-710	15
1360-1410	32	940- 970	23	670-690	14
1310-1350	31	910- 930	22	630-660	13
1260-1300	30	870- 900	21	600-620	12
1200-1250	29	840- 860	20	580-590	11
1150-1190	28	810- 830	19	560-570	10
1100-1140	27	780- 800	18	530-550	9

* SAT scores accepted for non-residents only.

7. First-time entering freshmen foreign students must present a minimum ACT score of 20 or a comparable SAT score and must also present a minimum score of 525 on the Test of English as a Foreign Language (TOEFL).

8. a. Students who have achieved all of the standards as specified by the Board of Trustees for admission to the universities under the governance of the Board of Trustees but who choose to attend an institution not under the governance of the Board of Trustees may transfer at any time to an institution under the Board of Trustees. This does not alter individual institutional requirements regarding transfer students.

b. Any student who has earned the required high school units but whose ACT composite score is below an institution's minimum required score and who has not been selected as a high risk student by the institution must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a "C" average (2.0 GPA on a 4.0 scale) in the following 24 semester credit hours:

6 semester hours
English Composition
3 semester hours
College Algebra or above
6 semester hours
Laboratory Science
9 semester hours
Transferable Electives

At the discretion of the institutional executive officer, an institution may allow a limited number of high risk transfer students who have not met the entire 24-hour transfer requirement to enter. This number shall be no greater than a number equivalent to five percent of the previous year's (for summer, fall, and spring terms) first-time transfer students at a particular institution. Each high risk student must have achieved a minimum of 15 transferable semester hours, with a minimum grade point average of 2.0

on a 4.0 scale. These 15 hours must include 6 hours of English Composition. Three (3) hours of English Composition may satisfy this English Composition requirement provided the student has satisfactorily completed four (4) Carnegie Units of high school English and two (2) full semesters or three (3) quarters of collegiate developmental English. Such student must satisfactorily complete a second three (3) hour credit English Composition course his first semester of admission.

c. Transfer students may be accepted from other institutions of higher learning only when the program of the transferring institution is acceptable to the receiving institution and the program of studies completed by the student and the quality of work performed by the student are acceptable to the Board of Trustees. The authorities at the institutions under the jurisdiction of this Board are authorized to require acceptable scores on recognized tests for such transfer students. No student seeking to transfer during the midst of the session, quarter, semester, or trimester of the institution in which he is currently enrolled can be considered.

B. *Delta State University – Mississippi State University – Mississippi University for Women – University of Mississippi – University of Southern Mississippi*

1. A minimum of a fifteen (15) composite score on the ACT is required.
2. In addition to students admitted with a fifteen (15) composite score on the ACT, the institution may enroll a number equivalent to five (5) percent of the previous year's freshman class enrollees of fifty (50) students (for summer, fall, and spring terms) to accommodate talented and/or high risk students with an ACT composite score of nine (9) and up to the current minimum admissions standards of that particular institution. Students with less than 27 semester hours credit may be counted to determine the number of freshmen for this purpose. A student may be counted in any one of the enrollment terms during the fiscal year, but not more than once during the same year.
3. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.
4. Any student with an ACT assessment composite score of 24 or above is exempt from the Board's high school units requirement.
5. Any student with less than the composite score of 24 who has a deficiency in the required high school units may be exempt

from an area of deficiency by having an ACT Assessment subtest score of at least 18 on the appropriate subtest. This option is not available for any student with more than one deficiency.

6. Any student who has a deficiency or deficiencies in the required high school units and who does not meet the exemption criteria shown above must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a "C" average (2.0 GPA on a 4.0 scale) in the following 24 semester credit hours:

6 semester hours
English Composition

3 semester hours
College Algebra or above

6 semester hours
Laboratory Science

9 semester hours
Transferable Electives

or

Attend Alcorn State University, Jackson State University, or Mississippi Valley State University (see their entrance standards) and earn a "C" average (2.0 GPA on a 4.0 scale) on 12 transferable semester hours.

C. *Alcorn State University*

1. A minimum of a thirteen (13) composite score on the ACT is required.

2. In addition to students admitted with a thirteen (13) composite score on the ACT, the institution may enroll a number equivalent to ten (10) percent of the previous year's fall term enrollment with an ACT composite score of nine (9) and up to the current minimum admissions standard.

3. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

4. See Section F.

D. *Jackson State University*

1. A minimum of a thirteen (13) composite score on the ACT is required.

2. In addition to students admitted with a thirteen (13) composite score on the ACT, the institution may enroll a number equivalent to eight (8) percent of the previous year's freshman class enrollees (for summer, fall, and spring terms) to accommodate talented and/or high risk students with an ACT composite score of (9) and up to the minimum admissions standards for the current year. Students with less than 27 semester hours credit may be counted to determine the number

of freshmen for this purpose. A student may be counted in any one of the enrollment terms during the fiscal year, but not more than once during the same year.

3. Students with a nine (9) up to the current admission standard composite score on the ACT and who have a 3.0 grade point average on a 4.0 scale or who rank in the upper fifty percent of their graduating class will be exempt from the institution's eight (8) percent flexibility allowance.

4. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

5. See Section F.

E. *Mississippi Valley State University*

1. A minimum of a thirteen (13) composite score on the ACT is required.

2. In addition to students admitted with a thirteen (13) composite score on the ACT, the institution may enroll a number equivalent to ten (10) percent of the previous year's fall term enrollment with an ACT composite score of nine (9) and up to the current minimum admissions standard.

3. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

4. See Section F.

F. *Alcorn State University–Jackson State University–Mississippi Valley State University*

1. Any student with an ACT Assessment composite score of 20 or above is exempt from the Board's high school units requirement.

2. Any student with less than the composite score of 20 who has a deficiency in the required high school units may be exempt from an area of deficiency by having an ACT Assessment subtest score of at least 15 on the appropriate subtest. This option is not available for any student with more than one deficiency.

3. Any student with a "B" average (3.0 on a 4.0 scale) in the required high school units in an area (e.g., mathematics) in which the student has no more than one deficiency may be exempt from that deficiency and from the required minimum ACT Assessment subtest score that is required for exemption. This option shall apply to no more than one area.

4. These institutions may offer Board-approved summer courses to high school graduates who have no more than one deficiency in any one area of the required high school units. The intent of these courses will be to fulfill the deficiencies of these students. College credit can be given for these courses, but this credit cannot be counted toward graduation from a Mississippi public university. Students taking these courses may not earn more than six semester hours in a summer school. Students selecting this option must either attend the institution where these courses were taken and earn 12 transferable hours or attend an institution other than those under the governance of the Board of Trustees and earn the 24 semester hours shown in item No. F. 5. as follows before being allowed to transfer to another Mississippi public university.

5. Any student who has a deficiency or deficiencies in the required high school units and who does not meet the exemption criteria shown above must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a "C" average (2.0 GPA on a 4.0 scale) in the following 24 semester credit hours:

6 semester hours	English Composition
3 semester hours	College Algebra or above
6 semester hours	Laboratory Science
9 semester hours	Transferable Electives

G. *Admissions standards for nursing program*

1. Admission to public baccalaureate programs

   a. For admission to baccalaureate degree nursing programs, students must present a minimum ACT score of 18. (For out-of-state students only refer to SAT Conversion Table.) Each institution is permitted to enroll up to ten (10) percent of its previous fall's nursing enrollment to accommodate high risk students, with the following provisos: that these students fall within the institution's total allowance for high risk students should their ACT scores be lower than 15 (13 at Alcorn), and that, students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

   b. All transfer students (from other programs within the institution or from other institutions) with ACT scores below 18 must complete all the courses required in the first year of the nursing curriculum (or pre-nursing curriculum if the school has an upper division nursing program) with no grade less than "C" (2.0 on a 4.0 scale) in each of

the natural, behavioral, and social science courses before being admitted to the nursing program. Such transfer students must also present an overall quality point average of 2.5 (on a 4.0 scale) on all work attempted prior to admission to the nursing program.

2. Admission to Public Associate Degree Programs

   a. Students must present a minimum ACT score of 15. (For out-of-state students only, refer to SAT Conversion Table.) To accommodate high risk students whose ACT scores fall below 15, each institution is permitted an enrollment allowance of up to ten (10) percent of its previous fall's nursing enrollment to accommodate high risk students and, that, students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

   b. Transfer students (from other programs within the institution or from other institutions) with ACT scores below 15 must complete successfully a minimum of twelve (12) semester hours or the equivalent prior to admission to the nursing curriculum. Such

students must have achieved a grade of "C" (2.0 on a 4.0 scale) or better in the freshman courses of Anatomy and Physiology, both of which are included in the twelve (12) semester hours above.

   c. Licensed practical nurses who score below 15 on the ACT must present a minimum score of 500 on the licensure examination for practical nurses.

3. Enrollment reports must be made to the Board of Trustees of State Institutions of Higher Learning by October 1 of each year identifying the nursing students admitted in the current academic year and their respective scores.

V. Applications containing false, contradictory, questionable, or uncertain data, or which fail to comply with the fundamental requirements or the policies of the institutions as established by the Board of Trustees shall be rejected.

VI. Each applicant to any of the institutions of higher learning must receive and have in his possession a letter or certificate of admission signed by the officer designated by the head of the institution before presenting himself for registration. No student shall be permitted to register or attend classes without such certificate. No officer shall issue a letter or certificate of admission to any student whose application has not been completed in accordance with the regulations of the Board of Trustees.

VII. No application shall be considered for any session, quarter, semester, or trimester unless such application meets the following requirements:

A. Contains truthful and substantially complete responses made in good faith to all requests for information contained in such application.

B. Is received at least 20 days before registration, except that the institutional officer may waive this requirement.

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MIISSISSIPPI

INTERPRETATIONS AND UNDERSTANDINGS OF MATTERS PERTAINING TO THE MINIMUM CORE REQUIREMENTS FOR ALL STUDENTS PURSUING UNDERGRADUATE DEGREE PROGRAMS IN MISSISSIPPI PUBLIC UNIVERSITIES

Core Requirements

English Composition	6 semester hours
College Algebra	3 semester hours
Laboratory Science	6 semester hours
Humanities and Fine Arts	9 semester hours

Effective fall 1984, all students enrolled for the first time at any college must complete the Board-approved core requirements before graduating from a Mississippi public university.

Students who were admitted to any college prior to fall 1984, who were eligible for regular admission to a Mississippi public university, and who transfer prior to fall 1986, may be exempt from the core requirements.

Students who were admitted to any college prior to fall 1984, who transfer to a Mississippi public university prior to fall, 1986, and who were not eligible for regular admissions must take the prescribed transfer courses but may be exempt from the core requirements. It is recommended that students be counseled to take the humanities and fine arts.

Effective fall 1986, *all* students entering Mississippi public universities must take the Board-approved core requirements.

Laboratory Science Courses

It was the consensus of the chief academic officers at the public universities that a science as used for the core requirements is defined as a traditional biological or physical science.

It was the consensus of the chief academic officers at the public universities that the generally accepted policy for a three-hour laboratory science course requires students to spend a minimum of two hours per week in lecture classes and at least two hours per week in a laboratory. The two hours per week in a laboratory can generate no more than one semester hour of credit.

BOARD'S EXHIBIT 185

MISSISSIPPI
PUBLIC JUNIOR COLLEGES

Statistical Data
1985-86

STATE BOARD FOR COMMUNITY AND JUNIOR COLLEGES
502C SILLERS BUILDING
JACKSON, MISSISSIPPI

MISSISSIPPI PUBLIC JUNIOR COLLEGES
STATISTICAL DATA
1985-86

Prepared By
State Board for Community and Junior Colleges
Staff
George V. Moody, Director
William H. Bunch, Education Specialist
Robert L. McClellan, Director of Programs
Mary Frances Henderson, Secretary
Carolyn Shorter, Secretary

502C Walter Sillers Building
P. O. Box 22991
Jackson, MS 39225

Telephone: (601) 359-3520

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MISSISSIPPI PUBLIC JUNIOR COLLEGES

Fifteen comprehensive junior (community) college districts provide educational programs and services which are accessible to virtually all Mississippi citizens. This has been a goal of these two-year institutions since the first one began admitting students in 1922. All public junior colleges are accredited by the Southern Association of Colleges and Schools and the Mississippi Commission on College Accreditation.

This network of institutions operates both university transfer and occupationally-oriented programs. Over sixty percent of the Mississippi high school graduates who attend college do so at the junior colleges. A student may transfer earned credits to four-year institutions without loss of credit if the student has followed the recommended course of study. Studies reveal that junior college transfer students perform as well as the native student at four-year institutions.

Junior colleges are the primary delivery mechanism for postsecondary occupational programs in Mississippi. These programs of two-years or less duration are designed to prepare students for immediate employment and for upgrading skills of those currently employed. Training programs in more than one hundred occupational skills are provided by the schools.

Junior colleges also provide a variety of continuing education, community and public service activities. The institutions are funded by state appropriations, local district taxes, student fees and federal grants.

A characteristic of Mississippi's junior colleges is their flexibility to respond to needs of a given segment of the state's society. This sensitivity is the result of an administration and a board of control operating at the local level. Each junior college district has a local governing

board which employs the president and faculty, owns property, establishes budgets for operation and capital improvement, and sets policies for the general governance of the institution.

Cooperation by the various junior colleges on state-wide endeavors is accomplished through the Mississippi Junior College Association, a voluntary organization of the institutions represented by their presidents. State coordination and oversight is provided by the State Board for Community and Junior Colleges, which on July 1, 1986, was named successor to the Junior College Commission. With regard to the system of junior colleges, the State Board establishes standards for operation, administers state appropriations, approves vocational and technical programs and attendance centers, assembles reports, and provides general coordination.

The State Board of Education (K-12) serves as the State Board for Vocational Education and administers through the Bureau of Vocational and Technical Education, programs on secondary and postsecondary levels.

[Map Omitted]

MISSISSIPPI PUBLIC JUNIOR COLLEGE DISTRICTS

1 Coahoma Junior College
Clarksdale, MS 38614

11 Copiah-Lincoln Junior College
Wesson, MS 39191

7 East Central Junior College
Decatur, MS 39327

8 East Miss. Junior College
Scooba, MS 39358

10 Hinds Junior College
Raymond, MS 39154

6 Holmes Junior College
Goodman, MS 39079

3 Itawamba Junior College
Fulton, MS 38843

12 Jones County Junior College
Ellisville, MS 39437

9 Meridian Junior College
Meridian, MS 39301

5 Mississippi Delta Junior College
Moorhead, MS 38761

15 Ms Gulf Coast Junior College
Perkinston, MS 39473

2 Northeast Ms Junior College
Booneville, MS 38829

1 Northwest Ms Junior College
Senatobia, MS 38668

14 Pearl River Junior College
Poplarville, MS 39470

13 Southwest Ms Junior College
Summit, MS 39666

MISSISSIPPI PUBLIC JUNIOR COLLEGES

BOARD OF TRUSREES

SCHEDULE OF MEETINGS

	Board Members	*Date*	*Time*
Coahoma	10	2nd Monday	9:00 a.m.
Copian-Lincoln	27	1st Thursday	4:30 p.m.
East Central	30	2nd Tuesday	12 NOON
East Miss.	36	Qtly – 1st Mon (March, June, Sept., Dec.	7:00 p.m.
		Exec. Committee 2nd Thursday Other Months	12 NOON
Hinds	15	1st Wednesday	1:00 p.m.
Holmes	22	3rd Thursday	2:30 p.m.
Itawamba	14	2nd Monday	6:00 p.m.
Jones	20	3rd Wednesday	12:30 p.m.
Meridain	5	3rd Thursday	4:30 p.m.
Miss. Delta	20	2nd Thursday	12 NOON
Ms Gulf Coast	29	Wednesday following 3rd Monday	10:00 a.m.
Northeast	15	2nd Tuesday	1:30 p.m.
Northwest	30	3rd Thursday	12 NOON
Pearl River	16	2nd Tuesday	2:00 p.m.
Southwest	15	2nd Tuesday	7:00 p.m.
Total	304		
MJCA	15	4th Tuesday	10:00 a.m.
SBCJC	10	4th Wednesday	1:30 p.m.

CALENDAR

WK	MON	TUE	WED	THUR	FRI
1	East Miss.Q		Hinds	Co-Lin	
2	Coahoma Itawamba	East Central Northeast Pearl River Southwest		Miss. Delta East Ms**	
3			Jones Gulf Coast*	Morthwest Meridian Holmes	
4		MJCA	SBCJC		

Q – Quarterly
* – Follows specific Monday
** – Executive Committee

MISSISSIPPI PUBLIC JUNIOR COLLEGE
ENROLLMENT by Class and Sex (1)
END of First Six weeks, 1985-86

	ACADEMIC			*VOCATIONAL*			*TOTALS*
	Full-Time	*Part-Time*	*Evening*	*Full-Time*	*Part-Time*	*Evening*	
Mississippi Only:							
Freshmen:							
Male	4,323	490	1,411	1,314	158	404	10,684
Female	5,423	835	2,829	2,794	360	674	14,274
Total	9,746	1,325	4,240	4,108	518	1,078	24,958
Sophomores:							
Male	1,807	260	750	978	122	192	4,751
Female	2,355	440	1,049	2,053	243	281	6,664
Total	4,162	700	1,799	3,031	365	473	11,415
Sub-Total							
Male	6,130	750	2,161	2,292	280	596	15,435
Female	7,778	1,275	3,878	4,847	603	955	20,938
Mississippi Total	13,908	2,025	6,039	7,139	883	1,551	36,373
Out-of-State							
Total	997	82	133	266	37	29	1,640
Out-of-State & Miss. Students Other Enrollment	14,905	2,107	6,172	7,405	920	1,580	38,103
Grand Total							58,882

MISSISSIPPI PUBLIC JUNIOR COLLEGE DISTRICTS

1 Coahoma Junior College
Clarksdale, MS 38614

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Summit, MS 3966

BOARD'S EXHIBIT 186

ACT ISSUEgram
NUMBER 6
January 1986

ADMISSIONS TESTING AND MINORITIES – SELECTED ISSUES AS RELATED TO THE ACT ASSESSMENT PROGRAM

INTRODUCTION

The ACT Assessment Program is a comprehensive program intended to assist students and institutions with postsecondary education planning and decisions. The ACT Assessment instrument consists of a battery of four academic tests written during a timed test session and a Student Profile Section and an Interest Inventory, which students complete at the time they register for the ACT Assessment.

The ACT Assessment is used by more than 1,375 postsecondary institutions and is administered annually to approximately one million high school juniors and seniors. Of the individuals who constitute this group, about eight percent are Afro-American/Black, one percent American Indian/Alaskan Native, two percent Mexican-American/Chicano, two percent Asian-American/Pacific Islander, and one percent Puerto Rican/Cuban or other Hispanic.

THE ISSUE

Postsecondary education is viewed by most people as an avenue of economic security and personal development. Accordingly, access to such education becomes a matter of great importance, especially to minority groups whose educational opportunities historically have been restricted.

It is in this context that the use of standardized tests for postsecondary admission is often questioned, especially by spokespersons for minorities. Such questioning has recently received greater public

* * * * *

over a period of many years. As such, they are intended to indicate at a particular point in time a student's level of development in the areas tested.

All four of the ACT tests are curriculum based. The English Usage and Mathematics Usage tests, in particular, emphasize the application of content-specific knowledge and skills. The Social Studies Reading and Natural Sciences Reading tests, while also requiring content knowledge, emphasize proficiency in interpretive and analytic skills.

In general, the average performance of most minority groups has been lower than the average performance of the majority group on the ACT tests. The following information from the 1984-85 ACT High School Profile Service supports this statement. These national norms are based on all ACT-tested students who graduated from high school in the spring of 1985, using only the most recent results if a student took the ACT Assessment more than once. The total number of such students was 738,836.

Examinee Group	% of Total	Average ACT Composite Score
Afro-American/Black Students	8	12.5
American Indian/Alaskan Native Students	1	13.9
Mexican-American/Chicano Students	2	14.6
Asian-American/Pacific Islander Students	2	19.1
Puerto Rican/Cuban/Other Hispanic Students	1	15.9
White Students	80	19.4
All Students	100	18.6

The ACT Composite score is the arithmetic average of scores on the English Usage, Mathematics Usage, Social Studies Reading, and Natural Sciences Reading tests and provides an estimate of students' educational development across these subject areas. The Composite score scale ranges from 1 to 35.

The lower average ACT Assessment scores earned by minority students are indicators that, on average, the past educational opportunities and experiences of most minority students are inferior to those of majority students. This relationship between the quality of educational experience and achievement has been thoroughly documented for students across all racial and cultural backgrounds.

Additional evidence of the relationship between educational participation and performance can be found in other ACT Assessment data. For example, based upon the same 1984-85 student data base, ACT-tested students of all racial-ethnic backgrounds who complete a core curriculum (consisting

* * * * *

INTERPRETATION AND USE

Because many factors (e.g., socioeconomic status, differences in educational opportunities, culture, etc.) can potentially affect the test performance of many students who are members of minority groups, ACT believes that assessment for the purpose of college admissions should reflect as complete a picture as possible of students and should include other information in addition to test scores. Following is a brief summary of important considerations to remember in the interpretation and use of ACT Assessment data with minority students:

- The ACT Assessment Program presents a comprehensive picture of students. The ACT tests are but

one element of a data base that includes information about a student's background, interests, plans, accomplishments, and needs for various types of assistance. This information is useful not only in admissions; but also with follow-up support (e.g., counseling, academic advising, placement, etc.).

- The ACT tests measure academic competencies developed by students through their past educational experiences. The scores should, therefore, be interpreted in view of previous educational opportunities and conditions.
- The ACT tests assess a student's current educational development and are not intended to measure either innate aptitudes or the capacity to acquire the academic skills stressed in the tests through subsequent interventions.
- ACT data should be used along with other information about students (e.g., personal qualities). The type of additional information that is of value is dependent upon the types of uses being made of the data.

SUMMARY

The preceding sections deal with a number of topics helpful to an understanding of the ACT Assessment Program and its utility in the college admissions and placement process. These include: procedures used to provide balance in test materials and to detect and eliminate passages or questions that might be viewed as biased against minorities; content of the ACT examinations; average test performance by minority and majority students; predictive validity of ACT test scores and self-reported high school grades for different racial-ethnic groups as related to first-year college performance; and

points to consider when interpreting and using ACT Assessment results with individual minority students.

As an indicator of general educational development and of attained cognitive skills important to academic success in postsecondary education, the ACT tests are appropriate for use with minority-group students. The manner of such use in the admissions decision is, however, most important. In the case of minority students whose prior educational opportunities have been limited, it becomes especially appropriate to make use of the total scope of information—cognitive as well as non-academic—provided by the ACT Assessment.

Supreme Court, U.S.
FILED
JUL 9 1991
OFFICE OF THE CLERK

Nos. 90-1205 and 90-6588

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR. ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX – VOLUME IV

MIKE MOORE
Attorney General
State of Mississippi
450 High Street, 5th Floor
Jackson, Mississippi 39201

WILLIAM F. GOODMAN, JR.
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Watkins & Eager
400 East Capitol Street
Jackson, Mississippi 39201

Counsel for Ray Mabus, et al.

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

Counsel for the United States

ALVIN O. CHAMBLISS, JR.
North Mississippi Legal Services
1006 Jackson Avenue
Oxford, Mississippi 38655

ROBERT PRESSMAN
Center for Law and Education
955 Massachusetts Avenue, Suite 13A
Cambridge, Massachusetts 02139

Counsel for Jake Ayers, Jr. et al.

PETITIONS FOR WRITS OF CERTIORARI FILED JANUARY 28, 1991 (No. 90-1205) AND DECEMBER 17, 1990 (No. 90-6588)
CERTIORARI GRANTED APRIL 15, 1991

In the Supreme Court of the United States

OCTOBER TERM, 1991

Nos. 90-1205, 90-6588

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR., ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY
OF STANDARD SCORES BY SUBJECT, ENTERING FRESHMEN

COMPOSITE

1986-1987

STANDARD SCORE	*ASU*	*DSU*	*JSU*	*MSU*	*MUW*	*MVSU*	*UM*	*USM*	*TOTAL*
36	0	0	0	0	0	0	0	0	0
35	0	0	0	0	0	0	0	0	0
34	0	0	0	0	0	0	1	0	1
33	0	0	0	1	0	0	1	1	3
32	0	1	0	5	0	0	5	1	12
31	0	0	0	24	1	0	12	6	43
30	0	0	0	41	0	0	19	10	70
29	0	5	1	54	4	0	38	14	16
28	0	4	1	77	6	0	57	23	168
27	1	10	2	115	7	0	72	49	256
26	3	16	10	77	9	1	55	31	202
25	3	23	13	107	15	2	79	40	282
24	4	15	16	92	10	3	80	56	276
23	4	14	28	95	13	14	76	59	303
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BOARD'S EXHIBIT 187

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY OF STANDARD SCORES BY SUBJECT, ENTERING FRESHMEN — Continued

COMPOSITE

1986-1987

STANDARD SCORE	ASU	DSU	JSU	MSU	MUW	MSU	UM	USM	TOTAL
16	37	33	50	94	21	18	75	92	420
15	42	47	76	94	8	22	70	79	438
14	22	15	93	31	0	16	21	30	228
13	30	7	100	36	0	20	16	23	232
12	32	5	90	17	0	36	6	7	193
11	50	3	93	1	0	35	1	3	186
10	39	3	106	1	0	31	1	0	181
9	43	0	68	0	0	16	0	0	127
8	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	1	1
5	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0
1	0	0	0	0	0	0	0	0	0
TOTAL	417	368	981	1574	168	302	1238	961	6009
1986-87 MEAN	14.50	19.24	14.84	21.67	21.03	15.17	21.44	20.12	19.27
1985-86	13.07	19.06	14.01	21.19	20.08	12.73	20.83	19.61	18.43
Change	+1.43	+0.18	+0.83	+0.48	+0.95	+2.44	+0.61	+0.51	+0.84

BOARD'S EXHIBIT 192

COMPARISON OF ACTUAL AND ESTIMATED PERCENTAGE OF BLACKS IN ENTERING FRESHMAN CLASS AT FIVE PREDOMINANTLY WHITE MISSISSIPPI UNIVERSITIES, 1985 AND 1986

Year	*University*	*Blacks in Freshman Class*	
		Actual	*Estimated*
		(Percent)	
1985	*Delta State University*	*17.9*	*17.5*
	Mississippi State University	*14.1*	*15.8*
	Mississippi University for Women	*15.7*	*20.0*
	University of Mississippi	*7.2*	*16.2*
	University of Southern Mississippi	*20.2*	*16.3*
	All Schools	*14.4*	*16.4*
	All Schools Except University of Mississippi	*16.2*	*16.5*
1986	*Delta State University*	*18.5*	*19.3*
	Mississippi State University	*14.9*	*17.6*
	Mississippi University for Women	*16.6*	*21.6*
	University of Mississippi	*6.5*	*17.9*
	University of Southern Mississippi	*23.1*	*18.0*
	All Schools	*15.3*	*18.2*
	All Schools Except University of Mississippi	*17.4*	*18.3*

Note: Persons who took the ACT tests were counted only once and categorized by their maximum ACT test score and the year they expected to enter college. Persons already in college were excluded from the analysis. Persons outside Mississippi were excluded.

[1] Includes persons seeking at least a Bachelor's degree, meeting core course requirements for 1986, and receiving an ACT score of at least 15; 50 exceptions allowed (or five percent of the previous year's freshman class, whichever greater) for those who have an ACT score of at least nine, but do not meet normal requirements.

Source: University enrollment data, 1985-86; American College Testing Tapes, 1984-1986.

BOARD'S EXHIBIT 193

COMPARISON OF ACTUAL AND ESTIMATED PERCENTAGE OF BLACKS IN ENTERING FRESHMAN CLASS AT FIVE PREDOMINANTLY WHITE MISSISSIPPI UNIVERSITIES, 1985 AND 1986

Year	*University*	*Blacks in Freshman Class*	
		Actual	*Estimated*[1]
		(Percent)	
1985	*Delta State University*	*17.6*	*15.2*
	Mississippi State University	*13.4*	*13.6*
	Mississippi University for Women	*15.7*	*17.1*
	University of Mississippi	*4.8*	*13.5*
	University of Southern Mississippi	*17.1*	*13.9*
	All Schools	*12.3*	*13.9*
	All Schools Except University of Mississippi	*15.1*	*14.1*
1986	*Delta State University*	*17.7*	*16.5*
	Mississippi State University	*13.2*	*15.2*
	Mississippi University for Women	*16.6*	*18.7*
	University of Mississippi	*4.8*	*15.4*
	University of Southern Mississippi	*19.8*	*15.4*
	All Schools	*12.8*	*15.6*
	All Schools Except University of Mississippi	*15.6*	*15.7*

Note: ***Persons who took the ACT tests were counted only once and categorized by their maximum ACT test score and the year they expected to enter college. Persons already in college were excluded from the analysis. Persons outside Mississippi were excluded.***

[1] Includes persons seeking at least a Bachelor's degree, meeting core course requirements for 1986, and receiving an ACT score of at least 15; 50 exceptions allowed (or five percent of the previous year's freshman class, whichever greater) for those who have an ACT score of at least nine, but do not meet normal requirements.

Source: University enrollment data, 1985-86; American College Testing Tapes, 1984-1986.

BOARD'S EXHIBIT 201

A NATION AT RISK:
The Imperative for Educational Reform

The National Commission on Excellence in Education

INTRODUCTION

Secretary of Education T. H. Bell created the National Commission on Excellence in Education on August 26, 1981, directing it to examine the quality of education in the United States and to make a report to the Nation and to him within 18 months of its first meeting. In accordance with the Secretary's instructions, this report contains practical recommendations for educational improvement and fulfills the Commission's responsibilities under the terms of its charter.

The Commission was created as a result of the Secretary's concern about "the widespread public perception that something is seriously remiss in our educational system. "Soliciting the "support of all who care about our future," the Secretary noted that he was establishing the Commission based on his "responsibility to provide leadership, constructive criticism, and effective assistance to schools and universities."

The Commission's charter contained several specific charges to which we have given particular attention. These included:

- assessing the quality of teaching and learning in our Nation's public and private schools, colleges, and universities;
- comparing American schools and colleges with those of other advanced nations;

* * * * *

- The College Board's Scholastic Aptitude Tests (SAT) demonstrate a virtually unbroken decline from 1963 to 1980. Average verbal scores fell over 50 points and average mathematics scores dropped nearly 40 points.
- College Board achievement tests also reveal consistent declines in recent years in such subjects as physics and English.
- Both the number and proportion of students demonstrating superior achievement on the SATs (i.e., those with scores of 650 or higher) have also dramatically declined.
- Many 17-year-olds do not possess the "higher order" intellectual skills we should expect of them. Nearly 40 percent cannot draw inferences from written material; only one-fifth can write a persuasive essay; and only one-third can solve a mathematics problem requiring several steps.
- There was a steady decline in science achievement scores of U.S. 17-year-olds as measured by national assessments of science in 1969, 1973, and 1977.
- Between 1975 and 1980, remedial mathematics courses in public 4-year colleges increased by 72 percent and now constitute one-quarter of all mathematics courses taught in those institutions.
- Average tested achievement of students graduating from college is also lower.
- Business and military leaders complain that they are required to spend millions of dollars on costly remedial education and training programs in such basic skills as reading, writing, spelling, and computation. The Department of the Navy, for example, reported to the Commission that one-quarter of its recent re-

> cruits cannot read at the ninth grade level, the minimum needed simply to understand written safety instructions. Without remedial work they cannot even begin, much less complete, the sophisticated training essential in much of the modern military.

* * * * *

But the problem does not stop there, nor do all observers see it the same way. Some worry that schools may emphasize such rudiments as reading and computation at the expense of other essential skills such as comprehension, analysis, solving problems, and drawing conclusions. Stil others are concerned that an over-emphasis on technical and occupational skills will leave little time for studying the arts and humanities that so enrich daily life, help maintain civility, and develop a sense of community. Knowledge of the humanities, they maintain, must be harnessed to science and technology if the latter are to remain creative and humane, just as the humanities need to be informed by science and technology if they are to remain relevant to the human condition. Another analyst, Paul Copperman, has drawn a sobering conclusion. Until now, he has noted:

> Each generation of Americans has outstripped its parents in education, in literacy, and in economic attainment. For the first time in the history of our country, the educational skills of one generation will not surpass, will not equal, will not even approach, those of their parents.

It is important, of course, to recognize that *the average citizen* today is better educated and more knowledgeable than the average citizen of a generation ago—more literate, and exposed to more mathematics, literature, and science. The positive impact of this fact on the well-being

of our country and the lives of our people cannot be overstated. Nevertheless, *the average graduate* of our schools and colleges today is not as well-educated as the average graduate of 25 or 35 years ago, when a much smaller proportion of our population completed high school and college. The negative impact of this fact likewise cannot be overstated.

Hope and Frustration

Statistics and their interpretation by experts show only the surface dimensions of the difficulties we face. Beneath them lies a tension between hope and frustration that characterizes current attitudes about education at every level.

We have heard the voices of high school and college students, school board members, and teachers; of leaders of industry, minority groups, and higher education; of parents and State officials. We could hear the hope evident in their commitment to quality education and in their descriptions of outstanding programs and schools. We could also hear the intensity of their frustration, a growing impatience with shoddiness in many walks of American life, and the complaint that this shoddiness is too often reflected in our schools and colleges. Their frustration threatens to overwhelm their hope.

What lies behind this emerging national sense of frustration can be described as both a dimming of personal expectations and the fear of losing a shared vision for America.

On the personal level the student, the parent, and the caring teacher all perceive that a basic promise is not being kept. More and more young people emerge from high school ready neither for college nor for work. This predicament becomes more acute as the knowledge base continues its rapid expansion, the number of traditional jobs

shrinks, and new jobs demand greater sophistication and preparation.

On a broader scale, we sense that this undertone of frustration has significant political implications, for it cuts across ages, generations, races, and political and economic groups. We have come to understand that the public will demand that educational and political leaders act forcefully and effectively on these issues. Indeed, such demands have already appeared and could well become a unifying national preoccupation. This unity, however, can be achieved only if we avoid the unproductive tendency of some to search for scapegoats among the victims, such as the beleaguered teachers.

On the positive side is the significant movement by political and educational leaders to search for solutions—so far centering largely on the nearly desperate need for increased support for the teaching of mathematics and science. This movement is but a start on what we believe is a large and more educationally encompassing need to improve teaching and learning in fields such as English, history, geography, economics, and foreign languages. We believe this movement must be broadened and directed toward reform and excellence throughout education.

Excellence in Education

We define "excellence" to mean several related things. At the level of the *individual learner,* it means performing on the boundary of individual ability in ways that test and push back personal limits, in school and in the workplace. Excellence characterizes a *school or college* that sets high expectations and goals for all learners, then tries in every way possible to help students reach them. Excellence characterizes a *society* that has adopted these policies, for it will then be prepared through the education and skill of its

people to respond to the challenges of a rapidly changing world. Our Nation's people and its schools and colleges must be committed to achieving excellence in all these senses.

* * * * *

8. The curriculum in the crucial eight grades leading to the high school years should be specifically designed to provide a sound base for study in those and later years in such areas as English language development and writing, computational and problem solving skills, science, social studies, foreign language, and the arts. These years should foster an enthusiasm for learning and the development of the individual's gifts and talents.
9. We encourage the continuation of efforts by groups such as the American Chemical Society, the American Association for the Advancement of Science, the Modern Language Association, and the National Councils of Teachers of English and Teachers of Mathematics, to revise, update, improve, and make available new and more diverse curricular materials. We applaud the consortia of educators and scientific, industrial, and scholarly societies that cooperative to improve the school curriculum.

Recommendation B: Standards and Expectations

We recommend *that schools, colleges, and universities adopt more rigorous and measurable standards, and higher expectations, for academic performance and student conduct, and that 4-year colleges and universities raise their requirements for admission. This will help students do their best educationally with challenging materials in an environment that supports learning and authentic accomplishment.*

Implementing Recommendations

1. Grades should be indicators of academic achievement so they can be relied on as evidence of a student's readiness for further study.
2. Four-year colleges and universities should raise their admissions requirements and advise all potential applicants of the standards for admission in terms of specific courses required, performance in these areas, and levels of achievement on standardized achievement tests in each of the five Basics and, where applicable, foreign languages.
3. Standardized tests of achievement (not to be confused with aptitude tests) should be administered at major transition points from one level of schooling to another and particularly from high school to college or work. The purposes of these tests would be to: (a) certify the student's credentials; (b) identify the need for remedial intervention; and (c) identify the opportunity for advanced or accelerated work. The tests should be administered as part of a nationwide (but not Federal) system of State and local standardized tests. This system should include other diagnostic procedures that assist teachers and students to evaluate student progress.
4. Textbooks and other tools of learning and teaching should be upgraded and updated to assure more rigorous content. We call upon university scientists, scholars, and members of professional societies, in collaboration with master teachers, to help in this task, as they did in the post-Sputnik era. They should assist willing publishers in developing the products or publish their own alternatives where there are persistent inadequacies.

5. In considering textbooks for adoption, States and school districts should: (a) evaluate texts and other materials on their ability to present rigorous and challenging material clearly; and (b) require publishers to furnish evaluation data on the material's effectiveness.
6. Because no textbook in any subject can be geared to the needs of all students, funds should be made available to support text development in "thin market" areas, such as those for disadvantaged students, the learning disabled, and the gifted and talented.
7. To assure quality, all publishers should furnish evidence of the quality and appropriateness of textbooks, based on results from field trials and credible evaluations. In view of the enormous numbers and varieties of texts available, more widespread consumer information services for purchasers are badly needed.
8. New instructional materials should reflect the most current applications of technology in appropriate curriculum areas, the best scholarship in each discipline, and research in learning and teaching.

RECOMENDATION C: TIME

We recommend *that significantly more time be devoted to learning the New Basics. This will require more effective use of the existing school day, a longer school day, or a lengthened school year.*

Implementing Recommendations

1. Students in high schools should be assigned far more homework than is now the case.

2. Instruction in effective study and work skills, which are essential if school and independent time is to be used efficiently, should be introduced in the early grades and continued throughout the student's schooling.
3. School districts and State legislatures should strongly consider 7-hour school days, as well as a 200- to 220-day school year.
4. The time available for learning should be expanded through better classroom management and organization of the school day. If necessary, additional time should be found to meet the special needs of slow learners, the gifted, and others who need more instructional diversity than can be accommodated during a conventional school day or school year.
5. The burden on teachers for maintaining discipline should be reduced through the development of firm and fair codes of student conduct that are enforced consistently, and by considering alternative class-

* * * * *

BOARD'S EXHIBIT 207

1985-1986 RACIAL ANALYSIS OF FACULTY: PREDOMINANTLY WHITE SCHOOLS

	Hired Pre-1974 (1)	*Hired Since 1974* (2)	*Total (1) + (2)* (3)
Number of Faculty:			
Total	1006	1557	2563
Black	4	56	60
Actual Percent Black	0.40	3.60	2.34
Expected Number Black[1]	33.6	58.0	91.6
Black Shortfall:			
Persons*ffi*	30	2	32
Units of Standard Deviation[3]	5.26	0.27	3.41

[1] Based upon av... ity estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

BOARD'S EXHIBIT 208

1985-1986 RACIAL ANALYSIS OF FACULTY: DELTA STATE UNIVERSITY

	Hired Pre-1974 (1)	*Hired Since 1974* (2)	*Total (1) + (2)* (3)
Number of Faculty:			
Total	66	175	241
Black	0	12	12
Actual Percent Black	0.00	6.85	4.98
Expected Number Black[1]	2.7	8.3	11.0
Black Shortfall:			
Persons[2]	3	(4)	(1)
Units of Standard Deviation[3]	1.67	(1.32)	(0.31)

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

BOARD'S EXHIBIT 209

1985-1986 RACIAL ANALYSIS OF FACULTY: MISSISSIPPI STATE UNIVERSITY

	Hired Pre-1974	*Hired Since 1974*	*Total (1) + (2)*
	(1)	(2)	(3)
Number of Faculty:			
Total	363	505	868
Black	0	20	20
Actual Percent Black	0.00	3.96	2.30
Expected Number Black[1]	9.7	14.7	24.4
Black Shortfall:			
Persons[2]	10	(5)	4
Units of Standard Deviation[3]	3.15	(1.40)	0.82

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

BOARD'S EXHIBIT 210

1985-1986 RACIAL ANALYSIS OF FACULTY: MISSISSIPPI UNIVERSITY FOR WOMEN

	Hired Pre-1974	*Hired Since 1974*	*Total (1) + (2)*
	(1)	(2)	(3)
Number of Faculty:			
Total	74	83	157
Black	1	2	3
Actual Percent Black	1.35	2.41	1.91
Expected Number Black[1]	3.0	3.6	6.6
Black Shortfall:			
Persons[2]	2	2	34
Units of Standard Deviation[3]	1.18	0.87	1.59

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

BOARD'S EXHIBIT 211

1985-1986 RACIAL ANALYSIS OF FACULTY: UNIVERSITY OF MISSISSIPPI

	Hired Pre-1974	*Hired Since 1974*	*Total (1) + (2)*
	(1)	(2)	(3)
Number of Faculty:			
Total	251	426	677
Black	0	10	10
Actual Percent Black	0.00	2.35	1.48
Expected Number Black[1]	7.6	15.3	22.9
Black Shortfall:			
Persons[2]	8	5	13
Units of Standard Deviation[3]	2.80	1.37	2.77

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

BOARD'S EXHIBIT 212

1985-1986 RACIAL ANALYSIS OF FACULTY: UNIVERSITY OF SOUTHERN MISSISSIPPI

	Hired Pre-1974	*Hired Since 1974*	*Total (1) + (2)*
	(1)	(2)	(3)
Number of Faculty:			
Total	252	368	620
Black	3	12	15
Actual Percent Black	1.19	3.26	2.42
Expected Number Black[1]	10.6	16.1	26.7
Black Shortfall:			
Persons[2]	8	4	12
Units of Standard Deviation[3]	2.39	1.02	2.37

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

BOARD'S EXHIBIT 214

RACIAL ANALYSIS OF FACULTY HIRING
DELTA STATE UNIVERSITY
1974 THROUGH 1986

	Hires
Faculty:	
Total	353
Black	39
Black (Percent)	11.05
Expected Number Black[1]	18.2
Black Hire Shortfall (Persons)[2]	(21.0)
Units of Standard Deviation[3]	(5.00)

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

Source: NERA calculations based on faculty hiring data supplied by counsel.

BOARD'S EXHIBIT 215

RACIAL ANALYSIS OF FACULTY HIRING
MISSISSIPPI STATE UNIVERSITY
1974 THROUGH 1986

	Hires
Faculty:	
Total	1,169
Black	41
Black (Percent)	3.51
Expected Number Black[1]	38.1
Black Hire Shortfall (Persons)[2]	(3.0)
Units of Standard Deviation[3]	(0.48)

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

Source: NERA calculations based on faculty hiring data supplied by counsel.

BOARD'S EXHIBIT 216

RACIAL ANALYSIS OF FACULTY HIRING
MISSISSIPPI UNIVERSITY FOR WOMEN
1974 THROUGH 1986

	Hires
Faculty:	
Total	184
Black	16
Black (Percent)	8.70
Expected Number Black[1]	9.2
Black Hire Shortfall (Persons)[2]	(7.0)
Units of Standard Deviation[3]	(2.32)

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

Source: NERA calculations based on faculty hiring data supplied by counsel.

BOARD'S EXHIBIT 217

RACIAL ANALYSIS OF FACULTY HIRING
UNIVERSITY OF SOUTHERN MISSISSIPPI
1974 THROUGH 1986

	Hires
Faculty:	
Total	799
Black	36
Black (Percent)	4.51
Expected Number Black[1]	35.6
Black Hire Shortfall (Persons)[2]	0
Units of Standard Deviation[3]	(0.08)

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

Source: NERA calculations based on faculty hiring data supplied by counsel.

BOARD'S EXHIBIT 262

PROGRAM DUPLICATIONS BETWEEN COMPREHENSIVE UNIVERSITIES AND NON-COMPREHENSIVE UNIVERSITIES

Program Level	Percentage Duplication Overall	P.B.I.	P.W.I.
Bachelors			
Total	79.7	78.8	87.2
Unnecessary	39.1	32.7	48.9
Masters	87.9	86.2	92.9

BOARD'S EXHIBIT 263

A SUMMARY OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING ACTIVITIES IN ACADEMIC PROGRAMS REVIEW

Submitted to the
1987 Mississippi Legislature in Accordance with
Senate Bill 2890, 1986 Legislature

January 5, 1987

INTRODUCTION

This document has been prepared in response to a legislative requirement made in Senate Bill 2890, Section 4, 1986 Legislative which reads in part as follows:

> Provided further, that the funds appropriated in this act shall not be expended after January 15, 1987, except on the condition that the Board of Trustees of Institutions of Higher Learning shall submit to the Legislature on or before January 5, 1987, a plan and proposal, including a timetable for the elimination of duplicating programs and degrees in the existing institutions of higher learning in this state, such plan and proposal having the ultimate objective of elminating duplicating program and degree offerings or providing a justification therefore.

This report describes actions taken from January 1, 1976, through December 31, 1986. This report addresses what the Board of Trustees of State Institutions of Higher Learning has already done to eliminate unnecessary duplication, explains why similar programs remain, and

describes what is being done to prevent unnecessary duplication in the future, with a chapter devoted to each topic.

The question of unnecessary duplication is central to the Board's concerns, as the Board aspires to provide the highest quality programs possible with the resources available and is charged with offering "the broadest possible educational opportunities...without inefficient and needless duplication" (37-101-13). Consequently, this document is comprehensive, addressing not only the question of duplication but Board actions that have resulted in the delivery of the highest quality education possible through the eight public universities of this state within the resources available.

CHAPTER I

WHAT THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING HAS ALREADY DONE IN ELIMINATING UNNECESSARY DUPLICATION

During the fiscal year July 1, 1975, through June 30, 1976, Mississippi's state universities continued to grow despite a national trend toward stabilization of on-campus student enrollment and despite a recession that had affected available funds. Unlike the national trend, enrollment totals increased significantly for all Mississippi universities. New degree programs were approved, and the promising future of higher education was evident in expanding physical facilities on the various campuses.

Off-campus programs, both credit and non-credit, continued to expand in keeping with increasing off-campus enrollment in the state and across the nation. Attendance

at off-campus centers was promoted by relaxing credit hour limitations for students attending degree-completing centers. Students were allowed to register for nine (9) semester hours per quarter at centers on the quarter system and twelve (12) semester hours per semester at centers on the semester system.

Although enrollment was increasing significantly at all of the state's public universities and physical facilities were expanding on various campuses, the Board recognized the scarcity of state resources and the possible effects on higher education funding in the future. The Board diligently sought to provide the highest quality of education possible with the available resources yet recognized the dearth of state funds and implications for the future. Thus, the Board initiated the first in-depth study of graduate programs at the state universities on January 15, 1976. The first review of doctoral programs within the system was initiated with the sole purpose of alleviating costly or unnecessary duplication of doctoral programs. In addition, on April 15, 1976, the Board declared a moratorium on establishing any new doctoral programs until such time as the study of the then current doctoral programs was completed.

During the 1976-77 fiscal year, Mississippi's state-supported institutions of higher learning continued to grow in many areas with increases in legislative appropriations, expansion of physicl facilities, additional new course offerings, and, an increased number of degrees awarded. The 1977 Mississippi Legislature appropriated $88,760,617 or an increase of 21.26% for general support of the public institutions of higher learning for 1977-78.

Despite the generous increase in revenues appropriated by the Legislature for fiscal years 1976-77 and 1977-78, the Board through its doctoral review continued its quest to eliminate unnecessary duplication.

To facilitate a more comprehensive treatment of the question of unnecessary duplication and delivery of quality education, the Board initiated on February 2, 1977, the consideration of the role and scope of the institutions under the governance of the Board.

In January 1979, the Board established a policy that provided the mechanics for the elimination and control of unnecessary duplication via off-campus extension classes. This policy established a 50-mile radius around each state university's home campus, Board-approved center, or regional campus as a geographic boundary. Another state university could not offer education services carrying academic credit within this boundary without approval of the Board of Trustees.

The Board completed the doctoral program review in 1979 after eliminating over 50% of the doctoral programs within the system and consequently virtually eliminating similar doctoral programs among the public universities. The Board then reviewed and updated its criteria for considering new programs in September 1979.

The Board was determined to curtail the excessive creation of new programs and at the same time assist Mississippians' access to programs not then available within the system. Thus, on November 15, 1979, the Board approved the recommendation from the Southern Regional Education Board that the Academic Common Market be expanded to include unique and outstanding baccalaureate programs. A cooperative agreement between

the 14-member states of the Southern Regional Education Board, the Academic Common Market enables out-of-state students to attend programs not available in their home state without paying out-of-state tuition. Prior to expansion, this option was only available at the graduate level. The Board's expanded participation provided greater access to academic programs.

In September 1980, the Board initiated two of the most significant actions in the history of public higher education in this state. At the September meeting, the Board instructed the staff to prepare, within the next six months, recommended role and scope mission statements for each of the universities for the Board's consideration. The Board also directed the staff to prepare a procedure for the review of all existing programs below the doctoral level with the exception of a few professional programs such as dentistry and medicine. A procedure was developed and a pilot review was conducted. Then in November 1981, the Board formally began the process of the review of programs below the doctoral level. The Board also made the decision in November 1981 to assign specific missions to each of the eight universities. Fully realizing that the State of Mississippi could not afford to have eight public universities trying to do all things for all people, the Board set directions for each of the eight universities so they could better utilize their resources in specific areas and at specific levels.

Although these were two separate actions by the Board, both were taken with the same goal in mind and should not be thought of as two separate and unrelated entities. Collectively these two actions provided a realistic mechanism for realizing the Board's determination to provide highest quality postsecondary education possible

within the resources available for the citizens of the state. The mission statements provided guidance on which programs to eliminate or retain. Thus, the academic programs review couped with the mission statements enabled the institutions to eliminate unnecessary duplication without impairing the ability of the system to provide access to quality education.

Having put in place mechanisms to address institutional focus and the elimination of unnecessary duplication among institutions, the Board turned its attention to upgrading the efficiency, cost effectiveness, academic standards, accreditation status, and national prominence of specific academic programs and areas. Between November 1981 and May 1982, the Board adopted several policies to accomplish these goals. Three of these policies are discussed in the following paragraphs.

Recognizing the need for more highly qualified elementary and secondary school teachers in the state, the Board adopted a policy requiring that students pass the College Outcome Measures Program (COMP) test before being admitted to teacher education programs. This policy was passed in November 1981 to go into effect beginning with the spring term of 1983. In addition to testing a student's ability to apply general knowledge, the COMP test assesses a student's speaking and writing abilities. The policy allows only those students who are perceived to have a high probability of both finishing a teacher education program and passing the National Teacher Examination to enter teacher education programs.

Determined that the citizens of Mississippi have access to some programs of national prominence within the boundaries of this state, the Board approved a plan in March 1982 for the development of Academic Centers of Excellence at the three comprehensive universities. These

universities were challenged to develop the degree programs within their assigned excellence areas to a position of national competitiveness. The Academic Centers of Excellence received legislative funds specifically for this purpose. In addition to providing access to outstanding programs, these programs are expected to attract increasing amounts of external funding and to significantly impact economic development within the state.

The Board was concerned with both access to higher education and with the expenditure of nearly one million dollars a year for developmental studies (remedial) programs. Thus, the Board instituted additional admission standards in July 1982 which require that specific high school courses be taken for admission to the publicly supported universities. These courses include the following Carnegie units: four English, three math, three science, two-and-a-half social studies, and one required elective. This policy did not become effective until fall 1986, providing ample time for any student impacted by the policy to meet the course requirements.

The review of programs below the doctoral level was completed in April 1984 and was immediately followed by a rereview of programs that had been rated below approval. The below approval programs were given two years to eliminate the deficiencies identified in the original review. Additionally, the Board called for a second review of doctoral programs. The second review was initiated in September 1985 and completed in July 1986. The rereview of programs below the doctoral level was completed in November 1986.

The Board of Trustees is committed to two basic facts in its decision-making: (1) only programs of high quality will be offered at the public universities in Mississippi; and (2)

every appropriated dollar given by the taxpayers of the State of Mississippi to the universities will be utilized in the most efficient manner. The Board has aggressively pursued these two commitments. The remaineder of this chapter is a quantitative treatment of what this Board has already done in its specific quest to eliminate costly or unnecessary duplication.

Consistent with the mandate of Senate Bill 2890, Section 4, 1986 Legislature, this document addresses the elimination of duplicated programs and duplicated degrees. For clarity and consistency, "program" and "degree" are defined for this document as follows. A program is an organized system of courses and activities designed to prepare students for one or more of a variety of societal functions such as employment, research, further study, etc., in a given discipline. One such program is a bachelor's level program in English. For example, a bachelor's level program in English may include both a Bachelor of Arts degree in English and a Bachelor of Science degree in English. The difference between these two degrees could be that one degree requires six hours of foreign languages and the other degree does not, with all other course and activity requirements being identical. Thus, a given program may contain the offering of several distinct degrees.

In November 1981, the Board of Trustees of State Institutions of Higher Learning assigned appropriate missions to each of the eight universities under its governance. The Board completed its task of eliminating unnecessary duplication within the eight universities in November 1986. This has been a continuous process that included two different complete reviews of doctoral programs, a complete review of all programs below the doctoral level

with the exception of a few professional programs such as dentistry and medicine, and a rereview of selected programs below the doctoral level. This process has included both the elimination and the addition of programs and degrees within the system. The review process has simultaneously eliminated unnecessary duplication from the system and put in place at each institution those programs necessary for realizing the institutional mission. Conducted over a ten-year period, this process has utilized well over one hundred of the most highly respected and recommended consultants in the respective disciplines and cost the State of Mississippi in excess of $135,000.

Chart A at the end of this chapter gives the number of programs and degrees that have been added to each institution within this period. This information is given by year, program and degree level, and is totaled specifically for each institution and for the system collectively. Chart B gives the number of programs and degrees that have been eliminated from the system and utilizes the same format as Chart A. Graphs A and B give pictorial summaries of the totals in Charts A and B. Graphs C and D show the decline in the number of programs and degrees offered collectively by the state's publicly supported universities for the period 1976-1986.

As can be seen from Charts A and B, 107 programs containing 109 degrees have been added to the system, and 471 programs containing 517 degrees have been eliminated from the system within this period. Therefore, a net 364 degree programs containing 408 degrees have been eliminated.

Graph C shows that the number of doctoral degrees between 1976 and 1986 was reduced from 147 to 72 or reduced by over 50 percent. Between 1976 and 1986, the number of doctoral programs for these degrees was reduced from

132 to 66, a 50 percent reduction. If the University of Mississippi Medical Center is not included in these calculations, then the number of doctoral degrees was reduced from 139 to 64 or reduced by 54 percent. During this same time the number of doctoral programs was reduced from a total of 124 to a total of 58 or a 53 percent reduction. As illustrated by Graph D, between 1976 and 1986 the number of degrees at all levels was reduced from 1236 to 828 or reduced by 33%. Over the ten-year period, the number of programs for these degrees at all levels was reduced from 1064 to 700, a 34% reduction.

The Board of Trustees of State Institutions of Higher Learning has been successful in decreasing the doctoral offerings of the doctoral-granting institutions by more than 50% and the overall offerings of all of the universities by 34%. The Board has used a time-consuming, rigorous process and the best available outside consultants in making these reductions. The Board is confident that any additional significant number of degree program or degree eliminations would endanger the potential for the respective institutions to realize their missions and would significantly decrease the level of in-state access to higher education for the citizens of Mississippi.

CHAPTER III

WHAT IS BEING DONE AS AN ONGOING PROCESS TO PREVENT UNNECESSARY DUPLICATION IN THE FUTURE

The Board of Trustees is satisfied that unnecessary duplication of academic programs and degrees within the state's eight publicly supported universities has been eliminated and that the 828 degrees within the 700 programs remaining in the system are of the highest quality

possible with the available resources. The Board further believes that if more programs or degrees were eliminated in significant numbers, existing programs and degrees as well as accessibility to high quality in-state higher education would be damaged.

The Board sees as its charge for academic programs and degrees 1) the continuance and enhancement of the present high quality of all programs and degrees remaining within the system and 2) the prevention of unnecessary duplication within the system in the future. The Board already has in place three formal mechanisms that assure the realization of these goals.

The first mechanism is a very rigorous and formal process for the initiation of any new program within the system. In order for any university within the system to start a new program, the following must occur: 1) the program must be within the dictates of the mission of the respective university; 2) the program must not lead to unnecessary duplication within the system; 3) there must be a documented need for the program; 4) the necessary resources must be available for the program to be of high quality; 5) the curriculum must be appropriately designed to facilitate the realization of the previously defined purposes of the program; and 6) all of the above requirements must be verified by an external consultant who has been recommended by the appropriate regional or national professional organization of the proposed new program. The Board will consider allowing an institution to initiate a new program or degree only after these six conditions have been satisfied.

The second mechanism is the Council on Doctoral Education created by the Board in July 1986. The Council

consists of one voting member from each of the five doctoral-granting universities: Delta State University, Jackson State University, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi. The general charge of the Council on Doctoral Education is to promote increased cost effectiveness and enhanced quality of doctoral programs in the state.

Some specific duties of the Council are as follows: 1) to monitor program development and emphasis in order to eliminate unnecessary programmatic duplication; 2) to coordinate the sharing of equipment, computer software, and other resources; 3) to establish a union catalog of library holdings; 4) to arrange for a shuttle service to transport library and other materials among campuses; 5) to encourage joint university courses and seminars; 6) to create a joint university colloquium program to bring

CHART A

New Degree Programs/Degrees: 1976-1986
12/3/86

	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	Total
Alcorn State University												
Bachelor's Degrees	1	0	0	0	0	0	0	1	0	0	0	2
Bachelor's Programs	1	0	0	0	0	0	0	1	0	0	0	2
Total Degrees	1	0	0	0	0	0	0	1	0	0	0	2
Total Programs	1	0	0	0	0	0	0	1	0	0	0	2
Delta State University												
Bachelor's Degrees	2	2	0	1	1	1	0	0	0	0	0	9
Bachelor's Programs	2	2	0	1	1	1	0	0	0	0	0	9
Master's Degrees	1	0	0	0	1	0	0	0	0	0	0	2
Master's Programs	1	0	0	0	1	0	0	0	0	0	0	2
Specialist Degrees	1	0	0	1	0	0	0	0	0	1	0	3
Specialist Programs	1	0	0	1	0	0	0	0	0	1	0	3
Doctoral Degrees	0	0	0	0	1	0	0	0	0	0	0	1
Doctoral Programs	0	0	0	0	1	0	0	0	0	0	0	1
Total Degrees	4	2	0	2	3	1	0	1	0	1	0	15
Total Programs	4	2	0	2	3	1	0	1	0	1	0	15

CHART A

Jackson State University

Bachelor's Degrees	1	3	2	0	1	0	1	0	0	0	0	8
Bachelor's Programs	1	3	2	0	1	0	1	0	0	0	0	8
Master's Degrees	0	3	1	0	0	0	0	0	0	0	0	4
Master's Programs	0	3	1	0	0	0	0	0	0	0	0	4
Specialist Degrees	0	1	1	0	0	0	0	0	0	0	0	2
Specialist Programs	0	1	1	0	0	0	0	0	0	0	0	2
Doctoral Degrees	0	0	0	1	0	0	0	0	0	0	0	1
Doctoral Programs	0	0	0	1	0	0	0	0	0	0	0	1
Total Degrees	1	7	4	1	1	0	1	0	0	0	0	15
Total Programs	1	7	4	1	1	0	1	0	0	0	0	15

Mississippi State University

Bachelor's Degrees	0	[illegible]	1	0	1	2	4	3	1	0	0	12
Bachelor's Programs	0	0	1	0	1	2	3	3	0	0	0	10
Master's Degrees	2	1	[illegible]	0	1	3	1	1	0	0	0	9
Master's Programs	2	1	0	0	1	3	1	1	0	0	0	9
Specialist Degrees	0	0	0	0	0	1	0	0	0	0	0	1
Specialist Programs	0	0	0	0	0	1	0	0	0	0	0	1
Doctoral Degrees	0	0	0	0	0	0	1	0	0	0	0	1
Doctoral Programs	0	0	0	0	0	0	1	0	0	0	0	1
Total Degrees	2	1	1	1	2	6	6	4	1	0	0	24
Total Programs	2	1	1	1	2	6	5	4	0	0	0	22

CHART A

Mississippi University for Women

Bachelorr's Degrees	0	0	2	1	2	0	2	0	2	1	0	10
Bachelor's Programs	0	0	2	1	2	0	2	0	2	1	0	10
Master's Degrees	0	0	2	2	0	0	1	1	0	0	0	6
Master's Programs	0	0	2	2	0	0	1	1	0	0	0	6
Doctoral Degrees	0	0	0	0	1	0	0	0	0	0	0	1
Doctoral Programs	0	0	0	0	1	0	0	0	0	0	0	1
Total Degrees	0	0	4	3	3	0	3	1	2	1	0	17
Total Programs	0	0	4	3	3	0	3	1	2	1	0	17

Mississippi Valley State University

Bachelor's Degrees	0	1	0	0	0	0	0	0	2	0	1	4
Bachelor's Programs	0	1	0	0	0	0	0	0	2	0	1	4
Master's Degrees	1	0	0	0	0	0	0	0	0	0	0	1
Master's Programs	1	0	0	0	0	0	0	0	0	0	0	1
Certificate Degrees	0	1	0	0	0	0	0	0	0	0	0	1
Certif. Programs	0	1	0	0	0	0	0	0	0	0	0	1
Total Degrees	1	2	0	0	0	0	0	0	2	0	1	6
Total Programs	1	2	0	0	0	0	0	0	2	0	1	6

CHART A

University of Mississippi												
Bachelor's Degrees	0	1	0	2	1	1	0	1	0	1	0	7
Bachelor's Programs	0	1	0	2	1	1	0	1	0	1	0	7
Master's Degrees	0	0	0	0	0	0	1	0	0	0	2	3
Master's Programs	0	0	0	0	0	0	1	0	0	0	2	3
First Prof. Degrees	0	0	0	0	0	0	0	0	0	1	0	1
First Prof. Programs	0	0	0	0	0	0	0	0	0	1	0	1
Specialist Degrees	0	2	0	0	0	0	0	0	0	0	1	3
Specialist Programs	0	2	0	0	0	0	0	0	0	0	1	3
Total Degrees	0	3	0	2	1	1	1	1	0	2	3	14
Total Programs	0	3	0	2	1	1	1	1	0	2	3	14
University of Mississippi Medical Center												
Bachelor's Degrees	0	0	0	0	1	0	0	0	0	0	0	1
Bachelor's Programs	0	0	0	0	1	0	0	0	0	0	0	1
Total Degrees	0	0	0	0	1	0	0	0	0	0	0	1
Total Programs	0	0	0	0	1	0	0	0	0	0	0	1
University of Southern Mississippi												
Bachelor's Degrees	0	0	1	1	0	0	0	4	0	0	0	6
Bachelor's Programs	0	0	1	1	0	0	0	4	0	0	0	6

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CHART A

University of SouthernMississippi – Continued												
Master's Degrees	0	0	0	2	2	0	0	3	0	0	0	7
Master's Programs	0	0	0	2	2	0	0	3	0	0	0	7
Specialist Degrees	0	1	0	0	0	0	0	2	0	0	0	3
Specialist Programs	0	1	0	0	0	0	0	2	0	0	0	3
Total Degrees	0	1	1	3	2	0	0	9	0	0	0	16
Total Programs	0	1	1	3	2	0	0	9	0	0	0	16
Overall IHL Totals												
Bachelor's Degrees	4	7	6	5	7	6	7	9	5	2	1	59
Bachelor's Programs	4	7	6	5	7	6	6	9	4	2	1	57
Master's Degrees	4	4	3	4	4	3	3	5	0	0	2	32
Master's Programs	4	4	3	4	4	3	3	5	0	0	2	32
Specialist Degrees	1	4	1	1	0	1	0	2	0	1	1	12
Specialist Programs	1	4	1	1	0	1	0	2	0	1	1	12
Certificate Degrees	0	1	0	0	0	0	0	0	0	0	0	1
Certif. Programs	0	1	0	0	0	0	0	0	0	0	0	1
First Prof. Degrees	0	0	0	0	0	0	0	0	0	1	0	1
First Prof. Programs	0	0	0	0	0	0	0	0	0	1	0	1
Doctoral Degrees	0	0	0	1	2	0	1	0	0	0	0	4
Doctoral Programs	0	0	0	1	2	0	1	0	0	0	0	4
TOTAL DEGREES	9	16	10	11	13	10	11	16	5	4	4	109
TOTAL PROGRAMS	9	16	10	11	13	10	10	16	4	4	4	107

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BOARD'S EXHIBIT 274

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

Mission Statements

November 19, 1981

Premise: The general purpose of mission statements is to provide appropriate differential roles of various state universities. The general objective shall be quality performance of assigned and approved program endeavors. All programs are subject to periodic review by the Board of Trustees in terms of need, viable size, and effective performance. Based upon program reviews, the role and scope of any univesity may be adjusted from time to time. A review of all existing academic programs shall be completed by April of 1984.

Proposed new programs outside of the present role and scope of an institution would require extraordinary justification before being considered by the Board of Trustees. Specialized programs outside the basic mission assigned to an institution would require an outstanding report on the academic program review to remain at that institution. The question of unnecessary duplication of programs would be addressed in the academic program review. No new program requests will be honored at any institution until all programs at that institution eligible for accreditation have been accredited.

Comprehensive Universities: Mississippi State University, the University of Mississippi, and the University of Southern Mississippi will continue to offer a number of programs on the doctoral level. However, each institution will be expected to provide leadership in the state in certain disciplines. New program requests will be given priority at

those institutions selected for leadership in the discipline in which the program is being requested. Program actions on academic program review will be guided by the leadership assignments. An institution will be expected to become or to continue to be regionally and nationally competitive in the disciplines to which it has been assigned a leadership role. The 1981 Mississippi Legislature has expressed a desire to specially fund "Programs of Excellence". The determination of leadership responsibilities plus the possible additional monetary support should heighten the achievement of national recognition. Determination of leadership and responsibilities by the Board of Trustees would be subject to periodic review. The leadership responsibilities should be assigned as follows:

Mississippi State University
Agriculture and Forestry
Architecture
Biological Science
Engineering
Veterinary Medicine

University of Mississippi
Art
Law
Letters
Foreign Languages
Mathematics
Pharmacy
Physical Sciences
Public Affairs
Community and Regional Planning
Social Sciences

University of Southern Mississippi
Communications
Computer Science
Home Economics
Library Science
Marine Sciences
Music
Polymer Science
Psychology
Social Work
Technology

University of Mississippi Medical Center
Dentistry
Health Related Professions
Medicine
Nursing

Each institution is expected to remain actively involved in organized research. The comprehensive universities should continue to be the centers for the development of new knowledge and the expansion of existing research.

These three universities are expected to continue to provide academic credit courses and non-credit activities in their centers and in other locations where cost effectiveness can be justified. The Board's policy concerning off-campus activities will continue.

Urban University: Jackson State University stands alone in this category because of its location in the capital city. Jackson State should develop a broader mission for the institution that will be directly related to its urban role. Part of this mission will be to enhance the overall quality of the institution that will require among other things a lesser participation by marginal students. The institution is expected to engage in more organized research that is

directly related to the urban area of Jackson, Mississippi. Jackson State may offer with Board permission off-campus credit activities when demand warrants. Jackson State should engage in non-credit service activities off-campus within their resources.

Regional Universities: Alcorn State University, Delta State University, Mississippi University for Women, and Mississippi Valley State University should initially continue to offer their present baccalaureate programs. These offerings would be subject to change as a result of the program review or other determinations made by the Board of Trustees. Alcorn State University and Mississippi Valley State University shall continue their present graduate offerings in the field of education. Alcorn State University and Mississippi Valley State University shall have until the summer of 1984 to gain accreditation for their master's programs in education. If accreditation has not been granted within that time frame, no new graduate students may be admitted to the programs. The Master of Science program in Agriculture at Alcorn State and the Master of Science program in Environmental Health at Mississippi Valley State will be closely scrutinized through the program review process.

Mississippi University for Women may offer graduate work in Home Economics within the limited areas of Home Economics Education, Merchandising, Child Development, and Textiles. Graduate work in Education may continue to be offered contingent upon gaining NCATE accreditation for the graduate level by the summer of 1984. Delta State may continue its graduate offerings in Education. Delta State may continue its graduate work in Business with the stipulation that the institution shall establish a timetable for accreditation that will be presented to the Board in March of 1982.

No regional university shall grant specialist degrees with the exception of Delta State in the areas in which accreditation has been earned. Regional universities with doctoral programs shall be subject to an intensive evaluation of those doctoral programs four years after the date of the approval by the Board of Trustees to determine continuation. Under no circumstances should additional doctoral programs be established at regional universities.

Delta State University will be allowed to continue to engage in off-campus academic credit offerings within the area assigned to that institution. Mississippi Valley State University will be encouraged to continue its participation in Greenwood with Board-approved courses, and Alcorn State University should continue its involvement in the Vicksburg consortium with Board-approved courses. There is no expectation that Alcorn State, Mississippi Valley State, or Mississippi University for Women will be engaged in academic credit offerings in other locations than those mentioned above except under extraordinary circumstances and only with Board approval. The Board's policy concerning off-campus credit activities will continue. Non-credit service activities for these four institutions shoud be limited to on-campus except where extraordinary need exists. There is no expectation for organized research at these institutions.

Present admission standards are not the same at all of the regional universities. This is desirable and should be continued.

BOARD'S EXHIBIT 344

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING'

STATE APPROPRIATIONS FOR NEW CONSTRUCTION AT PUBLIC UNIVERSITIES, 1970 THROUGH 1980

Alcon State University	$20,787,276.00		14%
Jackson State University	$25,659,138.00	39%	17%
Mississippi Valley State University	$11,864,058.00		8%
Delta State University	$12,079,487.00		8%
*Mississippi State University	$16,961,709.00		12%
Mississippi University for Women	$ 9,815,242.00		7%
University of Southern Mississippi	$18,931,026.00		13%
**University of Mississippi	$26,611,393.00		18%
Gulf Coast Research Laboratory	$ 4,504,000.00		3%
TOTALS	$147,203,329.00		100%

*Does not include School of Veterinary Medicine
**Does not include University Medical Center

BOARD'S EXHIBIT 347

Report on a Review of the Funding and Allocation Formula for Operating Appropriations for Mississippi's Public Universities
by
Joseph E. Johnson
January 16, 1985

Introduction

The Board of Trustees of State Institutions of Higher Learning in Mississippi and the Board's Executive Secretary and Director, Dr. E.E. Thrash, asked me to review the funding and allocation formula for operating appropriations for Mississippi's public universities, to assess the current formula, and to submit recommendations for consideration for possible formula modifications. To accomplish these tasks the following actions were taken:

1. General policies and technical factors relating to the current formula were studied and assessed in relation to funding results in Mississippi public higher education and to higher education funding formulas in Tennessee and some other states.
2. The current formula and its origin, adjustments, and application were discussed with Dr. E.E. Thrash and appropriate members of his staff.
3. Brief individual meetings were held with the Presidents and the Chancellor along with some of their staff members from the eight senior universities in Mississippi.
4. Several statistical documents with information on enrollments, appropriations, expenditures, faculty salaries, faculty-student ratios, and other factors were examined to secure basic data for the Mississippi public universities.

5. Some Southern Regional Education Board statistical documents were examined to get some data comparing Mississippi's public higher education appropriations, expenditures, and faculty salaries with those of like higher education institutions in the South.

I am grateful for the support and cooperation given by Dr. E.E. Thrash, institutional Presidents and Chancellor, and the staff in the Board offices.

Summary Findings

The discussions, studies, interviews, and data reviews set forth above led to some summary findings that may be of value to the Board of Trustees, Dr. Thrash and his staff, and the Presidents and Chancellor of the eight senior universities in Mississippi.

Southern Regional Comparisons on Appropriations Per Student –

For the 1983-84 fiscal year per student appropriations for Mississippi's three comprehensive universities (Mississippi State University, University of Mississippi, and University of Southern Mississippi) were more than 15.0 percent below the Southern regional average for like institutions. The per student appropriation for the urban university, Jackson State University, was more than 9.0 percent above the Southern regional average for like institutions. And, the per student appropriations for the four regional universities in Mississippi were more than 25.0 percent above the Southern regional average for like institutions.

The current formula has resulted in the State of Mississippi's funding its more complex and comprehensive universities less adequately than its regional universities on the basis of Southern regional practices and norms. This finding does not argue for less funding for the regional

universities. However, it does point up the need for adjustments in funding for the comprehensive universities to recognize their responsibilities for graduate and professional education and for research and to enable them to be more competitive with their sister comprehensive universities outside the State of Mississippi.

The State of Mississippi in 1983-84 ranked third among fourteen Southern states in per capita appropriations for higher education and ranked second in the percentage of state taxes going to higher education. These two points are made to indicate that Mississippi is making a relatively good effort for higher education, but more will be required to address the needs of the comprehensive universities and of the other Mississippi institutions.

Comparative Data for Mississippi's Public Universities—

Basic comparative data set forth below reflects some significant relationships among Mississippi's public universities for selected years.

Per Full-Time Equated Student Appropriations

Institution	*1981-82*	*1982-83*	*1983-84*	*1984-85*
A.S.U.	$3,408	$3,393	$3,557	$3,990
D.S.U.	3,258	3,224	3,503	3,585
J.S.U.	2,359	2,644	3,026	3,237
M.S.U.	2,498	2,488	2,689	2,958
M.U.W.	5,273	5,297	4,397	4,790
H.V.S.U.	2,887	3,192	2,914	3,202
U.M.	2,557	2,728	3,073	3,373
U.S.M.	2,845	2,831	2,982	3,143

The preceding table contains data that show a consistent pattern of providing better funding to regional universities than to the comprehensive and urban universities. This pattern of funding does not appear to fit the differences in role and missions of the Mississippi universities as defiend by the Board of Trustees.

Per student appropriations among the three comprehensive universities and Jackson State are fairly consistent. However, Mississippi State has per student funding at the low end of the scale even though it may have a greater concentration of higher cost programs than some of the other comprehensive universities.

Faculty-Student Ratios

Institution	*1981-82*	*1982-83*	*1983-84*	*1984-85*
A.S.U.	1:15	1:15	1:15	1:15
D.S.U.	1:14	1:14	1:16	1:15
J.S.U.	1:18	1:17	1:19	1:17
M.S.U.	1:21	1:22	1:22	1:19
M.U.W.	1:11	1:11	1:14	1:14
H.V.S.U.	1:16	1:16	1:22	1:19
U.M.	1:21	1:20	1:20	1:19
U.S.M.	1:17	1:18	1:19	1:18

The preceding table reflects a high level of consistency within the faculty-student ratios of the three comprehensive universities and within those of the regional universities with the exception of Mississippi Valley. Again, the current Mississippi formula is allocating state funds that enable the regional universities to have more state money per student and to have better faculty-student ratios than the more comprehensive universities.

Percentage of Enrollment at Each Academic Level, 1984-85

Institution	*Lower*	*Upper*	*Graduate*
A.S.U.	53.0	43.1	3.9
D.S.U.	39.2	51.9	8.9
J.S.U.	48.3	39.2	12.5
M.S.U.	38.3	50.2	11.5
M.U.W.	46.9	50.2	2.9
H.V.S.U.	62.5	36.6	1.9
U.M.	37.1	47.3	15.6
U.S.M.	32.1	56.9	11.0

Graduate Degrees as Percentage of Total Degrees, 1983-84

Institution	*Masters*	*Specialist and Doctoral*
A.S.U.	8.9	–
D.S.U.	18.7	1.7
J.S.U.	20.1	3.0
M.S.U.	18.9	5.7
M.U.W.	9.1	–
H.V.S.U.	7.9	–
U.M.	16.7	4.7
U.S.M.	20.5	3.3

The preceding enrollment and degree data raise a question about the adequacy of the current formula to recognize properly the funding and faculty staffing needs of institutions carrying the heaviest loads of graduate education, especially in professional and technological areas and at the post-master's level.

Average Nine-Month Faculty Salaries, 1984-85

Institution	*Professor*	*Associate*	*Assistant*	*Instructor*	*All Ranks*
A.S.U.	$30,422	$25,192	$21,805	$15,301	$20,892
D.S.U.	32,729	25,596	22,135	19,715	25,651
J.S.U.	30,478	27,298	23,062	20,718	25,271
M.S.U.	35,908	28,228	23,661	17,314	27,514
M.U.W.	30,994	25,457	22,931	20,072	25,970
M.V.S.U.	29,237	23,172	19,807	17,042	21,733
U.M.	37,400	29,094	23,311	16,833	28,234
U.S.M.	37,126	29,707	24,269	19,144	28,914

Average faculty salaries for the three comprehensive universities are fairly consistent and are about 10.0 to 12.0 percent below the faculty salaries of like institutions in the South. The average faculty salaries at Jackson State are approximately 11.0 percent below Southern regional averages. The average faculty salaries at the regional

universities range from being right at the Southern regional average (M.U.W.), to 5.0 to 6.0 percent below at Delta State, to falling 14.0 to 16.0 percent below regional norms at A.S.U. and M.V.S.U.

Instructional Cost Rates for Credit Hour Production –

The current Mississippi funding formula uses credit hour costs for each type of institution (comprehensive, urban, and regional) by academic level and academic discipline to calculate appropriations requirements for instruction. This approach is sound even though it presents one problem. It does not have separate cost rates for master's and doctoral programs even though the equipment and staffing needs of doctoral programs generally far exceed those of master's programs.

This Mississippi formula has another inherent weakness in that it generates credit hour costs based upon Mississippi expenditures and, therefore, can average itself to death over a period of time. Thus, the formula would have a difficult time addressing the apparent relative underfunding of the comprehensive universities. The addition of some cost goals, such as peer group faculty salaries and faculty-student ratios would be helpful.

Physical Plant Operation and Maintenance and Utility Funding –

The current formula makes funding allocations for all other educational and general functions (academic support, institutional support, student services, and plant operation and maintenace) by assuming that these functions represent 47.0 percent of total educational and general costs at comprehensive and urban universities and 50.0 percent at regional universities. The balance of educational and general costs consists of the formula generated dollars for instruction. Therefore, the current formula does not recognize any campus by campus variations in utility costs, in educational and general space, or in plant operation and maintenance costs not directly related to enrollments and instructional costs.

While educational and general square footage may relate to enrollments, it may also relate to extent of research programs, extent of public service programs, and the degree to which building needs have been met or not met over the years. Costs for utilities (energy, water, and sewage) may relate to instructional costs, but they may vary widely with utility rate structures, efficiency of heating and cooling systems, and the magnitude of square feet on the various campuses.

Research Allocations and Expenditures

The Board of Trustees and the Mississippi legislature are to be commended for providing funds to the eight senior universities for research with allocations of 3.0 percent of instructional costs for the four regional universities and of 6.0 percent for the three comprehensive universities and Jackson State University. However, data in the table below reflect a somewhat inconsistent pattern between formula research allocations and research effort and expenditures from both restricted and unrestricted current funds. Some of Mississippi's universities, especially M.S.U., A.S.U., U.M., and U.S.M., use the research allocations and attract other research funds from external private and public sources while some other Mississippi universities seem to do little or no research, which raises a question about the purpose of the research formula factor. Is it to generate, stimulate, or attract research or is it to add money to some institutions whose missions do not really include research?

Research Formula Allocations and Research Expenditures, 1983-84

Institution	*Allocation*	*Expenditures*
A.S.U.	$ 168,964	$2,100,118
D.S.U.	199,018	167,440
J.S.U.	759,354	12,512

Institution	*Allocation*	*Expenditures*
M.S.U.	1,407,609	8,134,934
M.U.W.	158,105	45,144
M.V.S.U.	142,472	9,984
U.M.	1,209,368	4,764,183
U.S.M.	1,409,737	1,763,987

Library Holdings–

The current formula also includes funding for library operating expenditures and holdings within the overall non-instructional formula element. The Board of Trustees has seemed to recognize that the formula and historical funding patterns have created inequities in library funding and has provided special catchup funds for the purpose of library holdings. As of June 30, 1984, Mississippi institutional library holdings were below the volumes needed to meet the standards of the Association of College and Research Libraries by the following volumes and percentages.

Institution	*Volume Shortage*	*Percentage Shortage*
A.S.U.	31,396	16.1
D.S.U.	72,846	24.7
J.S.U.	145,379	41.7
M.S.U.	737,330	71.6
M.U.W.	59,467	21.2
M.V.S.U.	52,244	46.0
U.M.	821,199	110.4
U.S.M.	599,481	83.5

These data may argue for a library funding formula that is related more closely to academic programs and research functions than the current formula, which appears to have kept certain types of institutions closer to library

standards for numbers of volumes than it has the comprehensive universities with graduate and professional education and research missions.

Recommendations

Based upon the preceding findings, comparative data, and personal opinions and experiences, the following recommendations are presented for consideration by the Board of Trustees, Dr. E.E. Thrash, and the Presidents and Chancellor of the senior universities in Mississippi:

1. The basic concepts of the current formula should be retained for the calculation of instructional costs. However, a separate cost rate should be calculated for doctoral programs whose enrollments and credit hours are concentrated at the three comprehensive universities.

2. The instructional component of the current formula or the entire formula should have added to it an element that would assess how well the Mississippi institutions are funded in relation to peer group universities within the South and the nation. This element might include comparative faculty salaries, per student appropriations, and/or student-or programs that fall below the averages or other norms of like institutions and programs. Currently, some Mississippi institutions compare much more favorably to peer group institutions than do others.

3. The research component of the current formula should be retained but it should be altered to allocate state research and of institutional expenditures for research and of institutional success in securing *external* research grants and contracts from private and public sources. The research allocation should not, therefore, be calculated as a percentage of instructional costs as is now the case.

4. A sub-formula should be developed to arrive at funding requests or funding allocations for physical plant operation and maintenance and for utilities. Utilities

should be figured on the basis of what is required to service, heat, and cool educational and general space with proper incentives for conservatioln. Institutional administrators can do little or nothing about utility rates, inefficient energy systems, or excess space to heat and cool. Physical plant operation and maintenance cost allocations should be calculated on the basis of dollars per square foot of space with weighting factors for intensity of use and age of space. Naturally, institutional administrators should be expected to use plant funds wisely to avoid large deferred maintenance projects from non-formula funds.

5. The current formula should be amended to add a factor for instructional and research equipment replacement. This factor may provide that 5.0 to 10.0 percent of the inventory value of institutional equipment be added to the formula budget request annually.

6. The Board of Trustees and the Mississippi legislature should adhere to the results of this funding formula and should avoid periodic special adjustments that add bits and pieces of money to formula generated amounts to meet special requests or needs. This practice along with enrollment shifts can lead to situations in which a largely undergraduate university has $5,000 a year per student and a rather complex university with a heavy concentration of students in engineering, agriculture, and the hard sciences has $2,900 a year per student.

7. The Board of Trustees and Dr. Thrash should create a formula advisory committee with representation from each institution to review and analyze the formula and to evaluate possible changes and adjustments. This group would annually present its views and recommendations to Dr. Thrash and his staff for consideration. However, the formula should not be altered substantively on an annual basis.

8. Ample evidence exists to demonstrate that the institutions do not have sufficient funds to handle major repairs and renovations within annual operating appropriations and allocations. Therefore, the Board of Trustees and its staff should evaluate the major maintenance and renovation needs of each institution, arrange them in priority order on objective criteria, and seek funding from the State of Mississippi in accordance with the priority list. These funds should not be part of the formula process for operating appropriations.

9. The Board of Trustees is to be commended for assigning its eight institutions to three classifications to reflect their goals and missions. The Board and its institutional officials and faculty are to be commended for raising admissions standards for students at certain institutions. But, the Board and its staff may need to evaluate a supplemental formula factor to provide special funding for those institutions that have to expend considerable effort and resources on remedial and developmental work for students not fully ready to handle regular collegiate coursework.

10. Concern has been expressed about the more pronounced lack of competitiveness in faculty salaries and other resources in certain academic areas, including engineering, law, pharmacy, computer science and agriculture. While this concern is justified, efforts to address specific problem areas should be managed carefully and should consider the following factors:

a. Special support for selected programs should be included in overall appropriations rather than in separate line items.

b. Supplemental funding for selected academic areas may ignore legitimate needs in other disciplines and may create ill will and poor morale.

c. Special funding with strings attached may lessen the ability of responsible administrators to allocate resources to campus priorities.

The preceding points argue for giving first priority to lifting overall higher education support instead of seeking funds for selected areas unless dire conditions prevail.

11. Appropriate higher education and State officials in Mississippi should recognize that a funding formula is adequate only if higher education appropriations are adequate. Therefore, a top priority should be to increase overall funding for the benefit of all higher education while modifying the formula to make it more equitable and reasonable.

Conclusion

I have enjoyed my brief period of work on the Mississippi higher education allocation and funding formula. I have sought to make a few suggestions for consideration by the Board and its staff. No effort has been made to propose or to construct a totally new formula. I believe that the current formula has many assets but do think it would benefit from some adjustments and additions.

BOARD'S EXHIBIT 360

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

Analysis of Amounts Actually Allocated Over or (Under) Pure Formula Allocations
1981-82 – 1986-87

	1986-87	1985-86	1984-85	1983-84	1982-83	1981-82	Total
ASU	–0–	$ 785,476	$ 241,154	$ (47,517)	$ (97,553)	$219,607	$1,101,167
DSU	–0–	383,569	58,285	(56,971)	(374,939)	(499,517)	(489,573)
JSU	–0–	1,235,726	387,997	(80,650)	(824,639)	(175,675)	542,759
MSU	–0–	(2,469,596)	(2,015,318)	(174,814)	182,215	342,667	(4,134,846)
MUW	–0–	321,976	1,030,531	717,758	1,609,191	335,037	4,014,493
MVSU	–0–	230,894	833,557	(35,237)	446,461	43,248	1,518,923
UM	–0–	995,820	621,571	(144,452)	(104,548)	(496,748)	871,643
USM	–0–	(1,483,865)	(1,157,777)	(178,117)	(836,188)	(119,989)	(3,775,936)

BOARD'S EXHIBIT 361

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

Comparison of University Average Cost Per Credit Hour to Group Average Cost Per Credit Hour
Formula 1983-84

	Average Cost Per Credit Hour		
Regular Session 1981-82	*Lower*	*Upper*	*Graduate*
Formula 1983-84			
ASU	$53.60	$120.82	$356.81
DSU	68.60	99.33	183.48
MUW	87.52	126.17	399.91
MVSU	48.32	91.98	153.83
Average Group Rate	$61.36	$107.33	$244.62
JSU	$47.54	$75.27	$187.59
USM	52.05	85.72	272.92
Average Group Rate	$49.99	$82.51	$240.10

BOARD'S EXHIBIT 362

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MISSISSIPPI

Comparison of University Average Cost Per Credit Hour to Group Average Cost Per Credit Hour Formula 1987-88

Regular Session 1985-86	*Average Cost Per Credit Hour* *Lower*	*Upper*	*Graduate*
Formula 1987-88			
ASU	$73.36	$134.40	$348.87
DSU	83.56	127.28	286.89
MUW	82.34	129.66	737.85
MVSU	56.63	80.84	225.14
Average Group Rate	$73.15	$118.68	$347.94
JSU	$55.47	$103.35	$180.73
USM	$75.98	$111.80	$372.33
Average Group Rate	$66.55	$109.66	$293.28

BOARD'S EXHIBIT 363

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MISSISSIPPI

Comparison of University Average Cost Per Credit Hour to Group Average Cost Per Credit Hour Formula 1982-83

Regular Session 1980-81	*Average Cost Per Credit Hour* *Lower*	*Upper*	*Graduate*
Formula 1982-83			
ASU	$49.88	$104.87	$301.24
DSU	62.54	80.41	147.68
MUW	76.69	105.56	315.24
MVSU	44.75	71.26	61.56
Average Group Rate	$56.32	$88.47	$192.41
JSU	$45.07	$66.41	$151.62
USM	50.76	81.48	254.18
Average Group Rate	$48.14	$76.69	$209.32

BOARD'S EXHIBIT 364

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING STATE OF MISSISSIPPI

Comparison of University Average Cost Per Credit Hour to Group Average Cost Per Credit Hour Formula 1981-82

	Average Cost Per Credit Hour		
Regular Session 1979-80	*Lower*	*Upper*	*Graduate*
Formula 1981-82			
ASU	$49.76	$ 85.24	$299.46
DSU	56.61	76.88	140.25
MUW	69.44	104.08	310.84
MVSU	34.88	57.99	70.82
Average Group Rate	$50.47	$79.90	$200.07
JSU	$39.47	$57.12	$155.40
USM	45.32	71.50	242.21
Average Group Rate	$42.47	$66.76	$205.05

BOARD'S EXHIBIT 430

RACIAL ANALYSIS OF FACULTY HIRING PREDOMINANTLY WHITE SCHOOLS 1974 THROUGH 1986[1]

	Hires
Faculty:	
Total	3,457
Black	193
Black (Percent)	5.58
Expected Number Black[2]	139.9
Black Hire Shortfall (Persons)[3]	(53.0)
Units of Standard Deviation[3]	(4.57)

[1] University of Southern Mississippi hires from 1977 only and 1987 hires from Mississippi State University and University of Mississippi are included.

[2] Based upon availability estimates from NERA tables.

[3] Rounded to whole persons.

[4] Based upon the binomial probability distribution.

Source: NERA calculations based on faculty hiring data supplied by counsel.

BOARD'S EXHIBIT 431

RACIAL ANALYSIS OF FACULTY HIRING
UNIVERSITY OF MISSISSIPPI
1974 THROUGH 1987

	Hires
Faculty:	
Total	952
Black	61
Black (Percent)	6.41
Expected Number Black[1]	38.8
Black Hire Shortfall (Persons)[2]	(22.0)
Units of Standard Deviation[3]	(3.63)

[1] Based upon availability estimates from NERA tables.
[2] Rounded to whole persons.
[3] Based upon the binomial probability distribution.

Source: NERA calculations based on faculty hiring data supplied by counsel.

BOARD'S EXHIBIT 441

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

A POSITION PAPER ON REQUIRED HIGH SCHOOL UNITS EARNED AS AN ADMISSIONS REQUIREMENT TO MISSISSIPPI PUBLIC UNIVERSITIES
September, 1982

Beginning with the fall term of 1977, the Board of Trustees of State Institutions of Higher Learning required that all first-time entering freshmen students desiring to attend one of Mississippi's eight universities should first achieve certain American College Test (ACT) scores before being admitted. It was hoped that these minimum standards would cause students to become better prepared before graduating from high school as well as would indicate to the universities those students who would have at least a minimum possibility of being successful in college.

In response to a continuing large number of academically underprepared students who were entering the universities in Mississippi, the Board in December of 1979 passed a policy that mandated developmental studies (remedial) courses on each campus. This policy became effective for the fall term of 1980 and involved all first time entering freshmen who scored below 12 on the English and/or mathematics portions of the ACT. These classes were not counted toward meeting degree requirements but were considered prerequisites before regular English and/or mathematics classes could be taken.

Two factors remained particularly disturbing to the members of the Board. First, too many freshmen students were not academically prepared to be successful in a strong baccalaureate degree program. Ways had to be found to strengthen the knowledge base of students before they reached the universities. Secondly, the cost for developmental studies courses was running nearly one million dollars a year. This additional cost was coming at a time when funds for regular academic programs and faculty were stabilizing. The number of students who needed developmental studies courses was very large. Nearly one-third of the freshmen enrollment was involved in these courses.

Two questions now remained for the Board of Trustees to consider. One, is involvement in developmental studies to such a large extent desirable for universities? In other words, is this the best use of university funds and tax dollars of Mississippi citizens? The answer was clearly "no"! The other question addressed the effectiveness of ACT standards and developmental studies programs as stimuli to cause high school students to take more academic courses and to become better prepared. The answer was even clearer that these two activities were not effective for a significant number of students. However, it was confirmed that ACT standards do serve an important function as described earlier, as do developmental programs.

Dr. Rupert Lovelace, a member of the Board of Trustees, at the March, 1982 meeting of the Board called for a study of the possibility of requiring particular high school courses as part of the admissions standards to Mississippi's eight universities. The rest of the Board unanimously supported his request and directed its professional staff to conduct such a study.

The Board realized that it could not control the high school graduation requirements set forth by the Mississippi State Department of Education but that it did have the authority to determine which courses a student should have completed prior to entering a Mississippi university. Successful completion of certain essential academic courses in high school would provide a reasonable degree of assurance that entering freshmen would be prepared to attempt a university-level education. Unfortunately, Mississippi universities were not generally requiring a wide array of high school academic courses as a condition of entrance.

A survey was conducted of all other state higher education governing or coordinating boards to ascertain the extent, if any, that their states had begun requiring certain high school units earned as a condition of admittance. Of the thirty states that responded, twelve had specific activities on the topic, while most of the others were either in the process or in the talking stage.

The Board considered the results of the survey at its June, 1982 meeting. Proposed requirements were drafted and the staff of the Board was instructed to send the proposal across the state for reactions. Four hundred seventy-eight letters containing the proposal were mailed to superintendents, principals, school board chairmen, State Department of Education, education associations, junir colleges, senior colleges, selected legislators, and various other groups.

Fifty-three percent responded for the proposal as submitted, 27 percent responded positively with the exception of the foreign language requirement, and 20 percent responded negatively to at least two parts. The original proposal called for the following units as requirements: 4 English, 3 math (Algebra I, Geometry, Algebra II), 3 science (one of which must be laboratory based), 2½ social sciences (including U.S. History and American Government), and 1 foreign language.

In addition to the survey pertaining to the original proposal, a number of meetings were held with the State Department of Education, university academic officers, and high school principals to discuss the proposal. All agreed something along this line needed to be done. There was debate over the exact courses. The foreign language requirement provided the biggest obstacle. The science requirement was viewed by a number of people as being too flexible, and encouragement was given to name the specific courses so as to exclude the use of general science, home economics, and agriculture as acceptable courses in science for college bound students.

The Board also had to decide when to implement whatever proposal was finally adopted. The fall, 1982 entering ninth graders needed to have the full four-year opportunity to achieve the finally adopted proposal.

On July 15, 1982, the Board of Trustees adopted the following additional admissions standard for freshmen students entering one of Mississippi's eight public universities:

High School Units (Grades 9-12) Required for Admission to Public Universities in Mississippi for Freshmen Students Entering Fall Term, 1986

Subject	Units	
English	4	– All must require substantial writing components.
Mathematics	3	– Algebra I, Geometry, Algebra II
Sciences	3	– Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of those chosen must be laboratory based.

High School Units (Grades 9-12) Required for Admission to Public Universities in Mississippi for Freshmen Students Entering Fall Term, 1986 – Continued

Subject	Units	
Social Sciences	2½	– Must include United States History and American Government.
Required Elective	1	– Choose from a foreign language or mathematics (above Algebra II) or a science (chosen from the science courses shown above).

It is also recommended that students pursue two units of foreign languages, take a mathematics course during their senior year, take a computer science course, and gain a level of typing proficiency.

Policies pertaining to transfer students and to special circumstances will be formulated at a later date.

There have been several questions since the adoption of these standards that have warranted answers. The difficult question of the effects of this policy on junior college transfers will be addressed in the fall of 1982 as will other special circumstances such as students twenty-one years of age and older.

Algebra I taken in the eighth grade will fulfill the Algebra I requirement but does not negate the need for three units of mathematics in grades 9-12. Neither General Science nor Physical Science is accepted as meeting the science requirement. The shortage of mathematics and science teachers is a key issue and must be addressed by the State of Mississippi. This long-term problem in these two disciplines cannot be solved by reducing the requirements.

The overwhelming public support that has followed the Board of Trustees' action on this issue has provided the

positive sign that Mississippi is ready for its educational system to make a turn around. The pendulum has been stuck on the negative side too long.

BOARD'S EXHIBIT 459

CHAPTER V
INSTRUCTIONAL COSTS AT RESEARCH UNIVERSITIES I

Larry L. Leslie and Paul T. Brinkman

INTRODUCTION

The purpose of this report is to compare instructional costs among eight Western Research Universities I[1] and to discern reasons for cost variations. The report consists of two parts: Part I presents basic cost data. The data reflect (1) cost comparisons among the three Arizona Universities; (2) institution-level cost comparisons among the eight Western Research Universities I; and (3) department-level cost comparisons for eight departments or fields of study within the eight Research Universities. Part II explores the reasons for cost variance among Research Universities I.

PART I: THE DATA

This report was commissioned to determine how costs at the University of Arizona compare with those at sister institutions. Cost analysis may allow an institution to identify where it may be more efficient or, simply, why its costs are what they are. In short the major, ultimate purpose served by a report such as this is to raise levels of institutional self-awareness.

Although the specific assignment for this report was merely to examine costs for a small number of departments in a small number of Western Research Universities I, the task was interpreted somewhat more broadly by the authors. Because it was known that state authorities invariably compare costs at all institutions under their pur-

[1] Carnegie Commission classification system.

view, it was decided first to develop an appropriate basis for comparing costs at the three Arizona Universities.[2] This comparison composes Section A of Part I. Second, it was deemed necessary, as background information, to compare aggregated or institution-level costs among the Research Universities. This is Section B of Part I. From these two bases, it was judged that the department-level comparisons—the actual assigned task—could be more readily and accurately interpreted. The departmental comparisons comprise Section C.

Section A: Aggregated Costs at Arizona Universities

The temptation is very great to compare directly the per student costs at the three Arizona Universities. Such comparisons, however, are precisely why "costing" has earned a bad reputation and the disfavor of many professional individuals and organizations. Such comparisons are largely without merit. They compare the proverbial "apples and oranges," for the three universities are not similar; they are expected to do quite different things.

The unique character of American higher education is embodied in the concept of *diversity*. Diversity is the quality that differentiates among colleges and universities. It is the quality of distinctiveness. This quality says that there is no better or best kind of collegiate institution; there are only different kinds, often with different expenses. There are, for example, community colleges, designed primarily to offer occupational and transfer curricula at a low cost to individuals who desire or need to continue their education close to home. There are four-year private colleges which offer a liberal education in a residential setting. And there are giant research univer-

[2] Indeed, the day this portion of the draft was written, the Arizona Board of Regents staff presented such comparisons to the Regents.

sities with broad curricula and research programs—universities which draw their students from across the state and nation, and universities that essentially offer every kind of program demanded by the citizens and the state.

The three Arizona Universities are distinctly different in these and other regards. They are of markedly different sizes and ultimately they have greatly different purposes. This fact has led the Carnegie Commission on Higher Education to classify them into different categories. The University of Arizona is classified as a Research University I, reflecting its heavy research and graduate emphases. There are no Research II institutions in the State. Descending down the scale of complexity, Arizona State is classified as a Doctorate-Granting University I, connoting that it does not have a major research function, in relative terms, but does have some doctoral programs. Northern Arizona University is classified as a Comprehensive University and College I, connoting that it is not primarily a graduate institution but does have a broad undergraduate curriculum.

The Carnegie and similar type classifications were designed to place collegiate institutions into comparable categories so that a number of comparisons could, in fact, be made. The notion was that one could properly contrast features and characteristics of similar kinds of institutions and thereby gain a quantity of useful information—recognizing that no two institutions are ever exactly alike and therefore are ever strictly comparable. Nevertheless, comparisons of similar institutions were seen to be far superior to contrasts of colleges and universities intended to do quite different things.

Table 1.1 was composed to provide a suitable basis for comparing the three Arizona Universities. Although for completeness per student costs are tabled as well, the "Index" columns contain the comparable data. Values in

these columns were computed by setting the average cost equal to 100 for all institutions in the category nationwide. Thus, for example, Arizona State University has a per student indexed instruction cost of 88.7, compared to a national average of 100 for all Doctoral-Granting Universities I. Similarly, NAU has an indexed cost of 100.6 and the University of Arizona has an indexed cost of 84.9. Thus, in relative terms, for their kinds of institutions, all three are relatively efficient of instructional costs, with NAU being relatively the highest cost and the U of A being the lowest. The fact that the order is reversed when one views the dollars expended per full-time-equivalent student reflects the greater normative expense of the Research University.

Indices for Northern Arizona University are higher than those for the University of Arizona in eight of the 11 categories. The respective indices for Arizona State University and the University of Arizona differ widely in four categories: research, academic support, operation and maintenance of plant, and unrestricted scholarships. However, it would seem that the most important difference between the latter two institutions is the much greater emphasis placed on research at the University of Arizona. Not only do their actual per student expenditures for research differ widely, namely, $1,701 at the University of Arizona compared to $168 at Arizona State University, but their corresponding indices contrast as well, as 110.7 versus 33.9, respectively.

Of the three Arizona institutions, Northern Arizona University has the highest costs, relative to institutions with similar missions. On the same basis, the costs at Arizona State University and the University of Arizona are, on the whole, rather similar. Excluding mandatory transfers, the average index is 96 for Northern Arizona, 77

Arizona. Excluding mandatory transfers and research, the average indices are 91, 81, and 75, respectively; and if the two scholarship categories are also excluded, the indices are 92, 72, and 78, respectively.

Section B: Aggregated Costs in Eight Western Research Universities I

The eight Western Universities in the category with the University of Arizona represent the majority of such public universities in the western United States. The institutions were selected to provide geographic and population balance.

Table 1.2 shows expenditures on a per student basis, expenditures on an indexed per student basis, and raw expenditures, respectively, for the eight institutions. In terms of expenditures per student, the eight institutions seem readily to fall into two groups: Berkeley, Davis, Los Angeles, and Washington in the high cost tier; and Colorado State, Texas A&M, Arizona, and Utah in the low cost tier. Instruction and Departmental Research expenditures at the University

* * * * *

TABLE I.1

Educational and General Expenditures Per Student FTE and Indices (Average Based on 100)
1976-77

	Arizona State University (1.3)		Northern Arizona University (2.1)		University of Arizona (1.1)	
	Per Student	Index	Per Student	Index	Per Student	Index
Instruction	$1,625.62	88.7	$1,476.44	100.6	$2,099.68	84.9
Research	168.18	33.9	111.07	140.5	1,701.49	110.7
Public Service	91.43	40.4	71.34	92.6	262.45	49.3
Academic Support	405.54	99.8	203.77	74.3	407.46	67.9
Student Services	151.83	71.9	137.87	72.1	159.88	73.3
Institutional Support	239.46	59.1	275.70	85.8	323.14	71.9
Oper. & Maint. of Plant	324.72	77.6	439.80	125.6	639.03	110.5
Scholarships & Fellowships Unrestricted	63.67	101.0	39.02	100.0	14.47	14.6
Scholarship & Fellowships Restricted	120.90	117.3	60.96	73.4	204.07	115.9
E&G Mandatory Transfers	5.02	4.9	.00	0	3.48	6.8
Total E&G Expenditures and Mandatory Transfers	3,196.44	75.0	2,816.00	95.2	5,815.19	86.6

Source: Annual HEGIS Survey

BOARD'S EXHIBIT 461

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

PILOT REVIEW OF EXISTING ACADEMIC PROGRAMS

In August of 1980, the Board of Trustees called for a review of existing academic programs under the direction of the staff of the Board. The staff subsequently developed, with institution input, a procedure for the review, the criteria to be reviewed, and the document for gathering such data. All data were submitted by the institutions by June 30, 1981, on the three disciplines to be reviewed. The three disciplines in the pilot review were French, Chemistry, and English.

A consultant was hired to assist the staff for each of the disciplines. Hearings were held for each discipline involving institutional representatives, the Board staff, and the respective consultant. Each institution was given an allotted time for its hearing. No institution was present at another institution's hearing.

The consultants were instructed to be candid and to the point. They were to address the strengths of each program as well as the weaknesses and to then provide time for institutional clarifications for any misinterpretations by the consultants.

The formal report issued by each consultant is available. A summation and staff recommendations follow:

FRENCH

Consultant – Dr. Frederick W. Vogler of the University of North Carolina – Chapel Hill. Dr. Vogler is presently serving as Associate Dean of the College of Arts and Sciences.

All existing programs in French were examined by Dr. Vogler. Admission to the baccalaureate programs at

Alcorn State University and Mississippi Valley State University had been suspended by the institutions prior to the review process. Some questions arose as to the nature of the master's degree in Foreign Language that exists at Mississippi State University. This program was not reviewed. Clarification will be made.

Baccalaureate programs are currently available in French at Delta State University, Jackson State University, Mississippi State University, Mississippi University for Women, University of Mississippi, and the University of Southern Mississippi. Master's programs in this major may be pursued at the University of Mississippi and the University of Southern Mississippi.

The consultant and the staff are comfortable with the baccalaureate and master's degrees available at the University of Mississippi. These should be the only baccalaureate and graduate programs available in French. The number of people seeking French as a degree program at any level at all of our universities is very low. All French programs, with the exception of those at the University of Mississippi, should serve an active role in a service responsibility to other degree programs but should not be retained as degree programs themselves. Mention should be made in fairness of the consultant's positive statements about the program at Mississippi State University.

One baccalaureate and one master's degree program would sufficiently meet the needs of the citizens of this state for a degree program in French. This action will not deprive students at Mississippi universities from taking the number of French courses necessary to meet program requirements in other majors.

CHEMISTRY

Consultant – Dr. James Traynham, Professor of Chemistry at Louisiana State University. Dr. Traynham

consulted for the Board of Trustees in August of 1979 regarding a request from Alcorn State University. He has served on numerous visiting teams for the American Chemical Society.

Programs examined by Dr. Traynham included the baccalaureate programs at Alcorn State University, Mississippi State University, Mississippi University for Women, and Mississippi Valley State University. The baccalaureate programs at Delta State University, Jackson State University, the University of Mississippi, and the University of Southern Mississippi surpassed the minimum number of graduates necessary to bypass the review procedure. All master's degree programs available were examined. These are at Delta State University, Jackson State University, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi.

The baccalaureate programs at Alcorn State University, Mississippi State University and Mississippi University for Women were all credible. Although the consultant did not recommend the discontinuance of any of the four programs reviewed, the staff urges the Board to immediately suspend further enrollment into the degree program at Mississippi Valley State University. The number of participants has increased recently, but this activity does not warrant expending the resources necessary by Mississippi Valley State University to upgrade its program to an acceptable level. There are obvious immediate equipment and library needs. These two categories of need are readily apparent in many other areas at Mississippi Valley. Existing programs can easily handle the number involved at Mississippi Valley. There is an excellent program available at Delta State University only forty miles away, and there are two other historically black institutions with much stronger programs.

Although the consultant made note of the small course enrollments at the master's level in Chemistry at Mississippi State University, the University of Mississippi, and the University of Southern Mississippi and also noted that faculty workloads would be envied at Louisiana State University, he did not recommend the cessation of any of the three programs. His decision was based primarily on the fact that the doctoral programs at all three had been previously reviewed and that all three had been retained by the Board of Trustees. The cross enrollment of undergraduate and graduate students in courses at Mississippi State University is a detriment to the program.

The faculty in the master's program at Jackson State University are underproductive in research and publications. He reminded them that the Master of Science is a research degree and that the faculty should serve as models to the studnets. The Delta State University program has few graduate students enrolled in graduate courses. Faculty research and publications are not supportive of this program. The consultant stated that there is no apparent need for this master of science program.

ENGLISH

Consultant—Dr. David Stewart, Chairman of the Department of English at Texas A & M University. Dr. Stewart was highly recommended by the Modern Language Association.

All baccalaureate English programs qualified for review with the exception of those at Mississippi University for Women, the University of Mississippi and the University of Southern Mississippi. Master's programs at Delta State University and Mississippi State University were examined while the same level was bypassed at Jackson State University, the University of Mississippi and the University of Southern Mississippi. Admission to the master's program

at Mississippi University for Women had been suspended earlier by the institution. The sixth year programs at the University of Mississippi and the University of Southern Mississippi were also reviewed.

One overriding recommendation made by Dr. Stewart was to encourage the use of graduate faculty to teach lower level composition courses either regularly or on a rotating basis at those institutions with graduate programs.

As expected, all baccalaureate programs reviewed were recommended to continue. However, there were noteworthy concerns. Questions concerning library adequacy and faculty credentials were raised about Alcorn State University's program as well as some fear of the extent of the interdisciplinary action being taken. The institution's comprehensive exam for sophomores was applauded. Delta State University's program should be wary of excessive teaching loads. Otherwise, the program was cited as being strong. An excessive teaching load was also apparent in the Jackson State University program. An unusually mature and stable faculty was regarded as a strength.

The baccalaureate program at Mississippi State University is endowed with an exceptionally strong faculty for which it is to be commended. The teaching loads, however, were unusually small. Mississippi Valley's program needs more qualified faculty. The two Ph.D. faculty members were added only recently. In addition, most of the faculty have their degrees in education rather than in English. The library must be severely upgraded.

The faculty in the master's degree program at Delta State University is commended for its participation in professional development. However, the small attraction to this program, coupled with the excessive loads it places on a faculty that would be fully utilized with the present

undergraduate program, does not warrant its continuance. The suspension of admissions to this program would allow the faculty and the institution to direct their attention to the progress of the well established baccalaureate program.

Both sixth-year degrees, the specialist at the University of Mississippi and the Master of Philosophy at the University of Southern Mississippi, have low enrollment. These degrees are simply stopping places between the master's degree and the doctorate. There are truly no additional costs for having this degree. Comments were made by Dr. Stewart that the University of Southern Mississippi program should have a language requirement and a comprehensive exam for a program of this level. No action is recommended for either program.

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

SUMMARY OF PROGRAM REVIEW FOR FRENCH, CHEMISTRY, AND ENGLISH

French

Baccalaureate –

1. Retain the program at the University of Mississippi.
2. Discontinue the programs at Delta State University, Jackson State University, Mississippi State University, Mississippi University for Women and University of Southern Mississippi.

Master's –

1. Retain the program at the University of Mississippi.
2. Discontinue the program at the University of Southern Mississippi.

Chemistry

Baccalaureate –

1. Retain all programs with the exception of one.
2. Discontinue the program at Mississippi Valley State University.

Master's –

1. Retain the programs at Jackson State University, Mississippi State University, University of Mississippi, and University of Southern Mississippi.
2. Discontinue the program at Delta State University.

English

Baccalaureate –

1. Retain all programs

Master's –

1. Retain all programs with the exception of one.
2. Discontinue the program at Delta State University.

SUMMARY OF PROGRAM REVIEW FOR FRENCH, CHEMISTRY, AND ENGLISH – Continued

English – Continued

Sixth-Year –

1. Retain the programs at the University of Mississippi and University of Southern Mississippi.

11/19/81

BOARD'S EXHIBIT 463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

No. GC 75-9-WK-P

JAKE AYERS, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM WINTER, ET AL., DEFENDANTS

Washington, D.C.
Wednesday, September 16, 1981

Deposition of:

ALBERT BERRIAN

called for examination by counsel for the defendants, pursuant to notice, a copy of which is attached to the court copy of this deposition, in room 7724, United States Department of Justice, 10th Street and Pennsylvania Avenue, Northwest, Washington, D.C. 20530, beginning at approximately 9:00 o'clock, a.m., before PATRICIA N. LOCKE, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

* * * * *

[30] Q. Is the University of Florida as high as 8 percent?

A. I would hope so.

Q. So would I, doctor, but I had the impression it was not and I was hoping you could help me with that.

A. I'm not up on those data. Now, I know generally how the percentages run, but I'm really not up on the individual States. But some flagship institutions are higher and some lower.

Q. Well, you just worked—excuse me.

A. Go ahead.

Q. You just worked a lot in Louisiana?

A. Yes.

Q. What's the percentage of black student enrollment at LSU?

A. LSU was around 7 percent and they have projected, I think, about a 11 percent enrollment over the next four or five years.

Q. Well, we'll talk about projections in a minute.

A. All right.

Q. But in actuality LSU is about 7 percent?

A. Somewhere in that range

Q. Again, under this 8 to 14 that you mentioned?

[31] A. Right.

Q. And that's in a state, is it not, where any person with a high school diploma can enter LSU if he or she chooses?

A. That's correct.

Q. Is the University of Georgia as high as 8 percent?

A. Georgia I have not looked at at all. I don't know why. It is a State where my roots are, but I just haven't looked at Georgia.

Q. Is the University of Kentucky as high as 8 percent?

A. I would say at least 8 percent or higher at the University of Kentucky. I know the University of Louisville is higher and I think maybe Kentucky since only 14 percent of the black students in Kentucky go to the traditionally black institution.

Q. Well, I don't want to get in trouble with the United States and I don't want to come out to your place and make any improper request, but I'm assuming the data that you have at your institute is available?

A. It is available. I do have data that will give me the percentage in every State which I have gotten from the National Council on Educational Statistics. I simply haven't screened the data and pulled the information.

* * * * *

[56] BY MR. GOODMAN:

Q. A moment ago, we alluded to the diversity among institutions within a statewide system.

A. Right.

Q. Should there be diversity among institutions, just like among people?

A. I would think so.

Q. In higher education, does that diversity usually range from two-year institutions all the way up through Ph.D.-granting institutions?

A. It does. Even from technical institutes in some cases up through Ph.D.-granting institutions.

Q. In this country, are there generally accepted ways to classify levels of institutions?

A. There are several ways. I guess the most common today is the so-called Carnegie classification or the five-scale classification, beginning with a two-year institution and moving up through the major Ph.D.-granting institutions.

Q. Well, are those five classifications roughly, first, two-year institutions?

A. Right.

Q. Second, four-year baccalaureate institutions?

* * * * *

[66] I don't think that any institution should turn out a student who is not really deserving of a college degree as defined in some irreducible minimal terms.

Q. To be sure there should be certain minimum standards.

A. Right.

Q. But, accepting that, you would then expect different standards at different institutions?

A. I would expect that.

Q. And not in Mississippi alone, but everywhere?

A. Everywhere.

Q. Who should determine the standards above those minimals at each institution?

A. I would think that the faculty would do that. That is where it would begin. The faculty would make that determination.

Q. As an educator, is it your belief that the state would set the minimal standards and then the academic community at each institution would determine how far above that?

A. I would say yes.

MR. HEUBERT: I would like a clarification.

When Dr. Berrian referred to the term "minimums," he was referring to exit minimums. Is that the sense in which

* * * * *

[108] maybe it needed another institution or so was I had the feeling that the population as a whole might be somewhat underserved by the higher education enterprise.

Q. What are the national averages of high school people going on to college?

A. It varies. I would say about 70 percent. Of course you get a State like New York, which is pretty wealthy, you have about 80 percent going on to college.

Q. But you have not investigated that in Mississippi?

A. No.

Q. How long did you spend at Jackson State?

A. I spent a half-day at Jackson State.

Q. Is Jackson State important to your series of findings that you've made and that you expect to testify concerning at the trial?

A. I would say so. I would say it's important since it has such a large percentage of the black students going to college in Mississippi that this would make it a very important institution.

Q. What did you find about Jackson State's progress as an institution in recent years?

A. Jackson State has made about as much progress as [109] any institution in the country. In fact, if you look back over a 10-year period, it is probably in the forefront of institutions making progress with the possible exception of Howard University.

Q. For the record, where is Howard located?

A. In Washington, D.C.

Q. How would you evaluate Jackson State University's progress, say, as compared to Southern University in Louisiana?

A. I would say that if one looks at the two institutions today, that I would rate Jackson State a stronger institution than Southern University in Louisiana.

If one takes a look at the projections for Southern University, future projections, I would say that Southern will very likely become a stronger institution than Jackson State if the State implements its plan. One reason is that

it also has a land-grant mission which, if carried out, would give it certain added inducements.

But today I would say Jackson State is a stronger institution.

Q. In rating institutions you are looking at program quality, program type, are you not?

A. Yes, I am looking at that. Also faculty quality,

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[157] in an ACT tabulation about black freshmen that did not include Jackson State, would you, sir?

A. I think I might, because I don't think that the freshmen at Jackson State are significantly different from those at the other two black state colleges.

So I would assume that their profiles are very similar to those at Valley and Alcorn.

Q. We are dealing with averages, though, aren't we, Doctor?

A. We are.

Q. If we exclude almost half of the people we are trying to describe, do you still feel we would have average—that it would have meaning and value?

A. I would think that, given the relatively homogeneous nature of the black population, that one could safely assume that you could take the average from the other two black colleges and ascribe it to Jackson State and not be too far off in your description of the problem.

Q. Is Jackson State a more comprehensive university than Alcorn?

A. Very much so.

Q. Is it a more comprehensive university than Valley?

[158] A. It is.

Q. Didn't I understand you to say this morning that better students tend to gravitate to more comprehensive universities?

A. Normally.

Q. So, based on that, wouldn't we assume that higher proportions of better equipped black students would enroll at Jackson State University?

A. I think higher numbers. I don't know about higher proportions, but higher numbers.

Q. Does Jackson State University draw a substantial percentage of its student body from the Jackson, Mississippi, area?

A. It does.

Q. Do you have any figures on that?

A. I don't. There are some charts, however, which reveal that information.

There is a chart here which lists the counties comprising the service areas of various institutions, and I have a list of the counties from which Jackson draws, and Jackson is one of the counties.

Q. Well, Hinds County is where Jackson, Mississippi, is

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[160] In other words, is a 21 so close to a 22 that you wouldn't make much distinction?

A. At certain points I would make a major distinction, and at certain other points I might not.

I don't think I would make as much distinction between a 10.9 and a 12.1 as I would between a 14 and a 16.

I think we are dealing, with the 14 and 16, with people who are marginally close to being at a certain point.

But when you get down in the 10s and 11s, the gap from where they ought to be is so wide that it simply mens that the remedial problem is a little more intensive.

I think that the differences, as you go down, they are not as significant as the differences might be when you moved up the scale.

Q. Is the truth of it that a 10 or an 11 just is drastically low?

A. It is drastically low.

Q. By any sort of national average, that sort of person is not reflecting a level of preparedness for college work, is that right?

A. He is certainly not reflecting a level of achievement, [161] academic achievement, for college work.

The person might be prepared psychologically. The person might be prepared in terms of potential; but certainly not in terms of achievement.

Q. So, unless that person was feeling bad that day or, you know, there was some problem with that, it is either a question of remedial education or further precollege education?

A. I would say that the person needs developmental education.

I am making a slight distinction between remedial and developmental.

I am seeing developmental as being more sophisticated than remedial, although the terms are sometimes used synonymously.

Q. Putting aside for the moment social factors, I am trying to find out from you if Jackson State University is or has an educational basis for admitting students with scores of 10 or 11?

A. I'm not familiar enough with what they do to say, since I haven't really taken a look at how they address the question of dealing with the students that they get as they

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[74] **TESTIMONY OF DR. CLIFTON F. CONRAD**

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Q. Curricular duality, you used the term program duplication. Could you identify for the Court the components of the program duplication?

A. If I understand your question, I—I think it is useful and I think this follows from the revised statutes, federal statutes written in 1968 as relative to this litigation. I break down program duplication into two subparts.

One of those is a necessary or essential duplication, and the other refers to unnecessary or nonessential duplication.

[75] If I understand your question, let me briefly define each of those. Two different types—I repeat two different types of program duplication. One of which is called necessary, the other unnecessary.

In the case of the former, a program I define as necessarily duplicated, if the presence of that program is essential for the provision of general education and specialized education in the basic liberal arts and sciences. It refers—this definition refers to the baccalaureate programs; that is to say all necessary or essential programs are considered to be at the baccalaureate level, and all of those programs that do not meet this definition are, of course, nonessential. Nonessential programs.

In short, the first definition, then, the first subpart of the program definition—program duplication and necessary duplication simply refers to the core programs. Programs that are considered to be essential.

For example, history, political science, psychology, biology, basic core programs that any institution of higher education, if it is to consider itself as such, should offer. That I define as necessary duplication.

On the other hand, there is the concept of unnecessary duplication.

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[76] A. A—In referring to unnecessary duplication, I refer to those instances in which two or more comparative institutions offer nonessential or noncore programs, unnecessary duplication, two comparative institutions are offering programs, the same programs, say sociology—not sociology but say pharmacy or whatever program that are nonessential or noncore. That, I consider to be unnecessary duplication.

I repeat, in those instances where the programs are judged to be—to be nonessential.

It may be further clarifying in the case of these two definitions for the purpose of the Court, that I do define very concretely in the—in my report for 1981 necessary programs that are considered to be necessarily duplicative. I referred earlier to sociology, political science and psychology.

Table four in my report for 1981 identifies those [77] programs which when they are offered at two or more comparative institutions can be considered necessarily duplicative.

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[84] In addition, in 1981, I also made some other comparisons. It strikes me that it is also very important to make comparisons between particular sets of institutions with one—with one institution being a traditionally white institution and another being a traditionally black institution.

In 1981, I made five such comparisions. One comparison was between the University of Mississippi and Jackson State University. The second was between

Mississippi State University and Jackson State University. A third was between the University of Southern Mississippi and Jackson State University.

In other words, the first three comparisons involved the three comprehensive traditional white universities and Jackson State University. The fourth comparison was between the relatively geographically proximate institutions, Delta State University and Mississippi Valley State University in Itta Bena. The fifth comparison was between Alcorn State University and the University of Southern Mississippi.

So, there were, in short, in addition to the grouped comparison, there were five comparative sets of institutions that I looked at as well.

Q. Did you examine the same institutions in 1986 that you examined in 1980?

A. I did not. In 19—essentially I did with one exception. [85] I added a comparative group in 1986 when I did my study. It seemed important to me—in 1987 I did the study really. It seemed important to me to compare the two land grant institutions in the state, since one is a traditionally black institution, Alcorn State University, and one is a traditionally white.

I did add a sixth comparative group, and that is being historically black Alcorn State University and the land grant Mississippi State University.

Q. In 1981, did you do any comparison of the four degree-granting centers?

A. I looked at the degree granting centers briefly. I did not look at them in great depth.

What I wanted to see was if there was—were differences in the evolution of the degree granting centers in the State of Mississippi between 1954 and 1980.

Q. Did you review the degree granting centers in 1986?

A. I did not.

Q. What criteria did you use in selecting the institutions to be used for the comparison purposes?

A. The major criterion that I have used in this case has to do with overlapping service areas. It seems to me—and there is a good bit of variance here—but in varying degrees, it can be said that each of the eight institutions in—in the State of Mississippi draw students from throughout the [86] state.

Now, there is a good bit of variance there. I would be the first to acknowledge. It is because these institutions draw students from across the state that it becomes, I think, particularly important to make comparisons between the grouped institutions, the traditionally white institutions on the one hand and traditionally black institutions on the other.

At the same time, the service areas where institutions draw their service, their students from, some of those areas overlap more than others. A good case would be Jackson State University, which attracts students not only from Jackson, I think, but also from throughout the state, as certainly does the University of Mississippi. A relatively small town that draws students from here in Oxford from across the State of Mississippi, as well as across the South and the rest of the country.

So overlapping service area was the major criterion that formed my choice of both of grouped comparisons, as well as between five comparative sets in 1981 and six in 1986.

There are also some other reasons that I refer to my 1981 report. Certainly, I think it is important to compare Jackson State University, the most comprehensive of the three traditionally black institutions with the major traditionally white comprehensive institutions in this state, the

University of Southern Mississippi, Mississippi State and University [87] of Mississippi.

Finally, I should emphasize that adding, as I have intimated already, the comparison between the two land grant schools was important for the simple reason that both our land grant institutions, similar mission at least historically, and that seemed to me to be in retrospect an important comparison to make, such that I have added that for my 1986 analysis, even though I could not have it in the 1981 analysis.

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[96] Q. Did you study unnecessary program duplication?

A. Yes—and—I did.

Q. How did you determine which programs are necessary?

A. I provided you earlier with a definition of necessary programs. I referred to those basic programs, core programs in the liberal arts and sciences that any self-respecting institution of higher education would have. If you will turn to table—I believe it is table four.

MS. YOUNGER: Exhibit 482, Your honor.

THE COURT: Okay.

THE WITNESS: Forgive me. It is table six.

MRS. YOUNGER: 485.

THE WITNESS: Based on my definition here, I identify necessary programs or more precisely—and this is the way I would wish to say it—programs in which if there is a duplication between any comparative sets of [97] institutions, that it should be considered necessary because it is—institutions—higher education institutions, I think it should be clearly permitted to offer programs within these areas. The biological sciences and education and foreign languages, math, physical sciences and so on, so the par-

ticular programs that are listed here in table six, I refer to the HEGIS number, as well as the discipline by name.

Those are programs that are considered necessary. Any programs that fall outside this operational definition that are not displayed here in table six are automatically classified as unnecessarily duplicated. That is that they would not be considered core programs like these programs right here.

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[103] Then I looked at what had happened between 1966 and 1974, and finally between 1974 and 1980.

Q. All right. Now, what conclusions did you reach in terms of program equality when you compared the traditional black institutions in 1954?

A. Well, when I—compared them with the traditionally white institutions?

Q. That's correct.

A. Well, when I compared them with the traditionally white institutions in 1955, really, I saw that or found that there was what I interpreted as quite different overall program quality.

On the one hand, you had the traditionally white institutions, two of which were doctoral granting institutions. I refer to the University of Mississippi, here in Oxford, as well as Mississippi State University. The later had very few doctoral programs but both of them were doctoral granting institutions. The—

Interestingly, most of the institutions in the State of Mississippi were very much oriented toward teacher education. Even all eight of them, but the traditionally white institutions—and I refer particularly to the three comprehensive universities, U.S.M., U.M. and M.S.U., had much greater range of programs than did the traditionally black institutions.

[104] It is particularly notable that in 1955, three of the five traditionally white institutions offered graduate study. Only one traditionally black institution offered graduate study or graduate master's program in education at Jackson State University.

I thought it useful in writing this section of the report to refer to the Bruton Study that was done in the mid-1950's, which did in part examine—make program comparisons between the traditionally black and traditionally white institutions in this state.

It found, if I may quote, "great inequalities in the area of higher education."

Black students' opportunities are limited in the three traditionally black colleges, "to undergraduate training in teacher education, agriculture and the mechanic arts and in the practical arts and trades."

Overall, and in summary, the traditionally white institutions had much broader scope and range of program offerings and they offered programs certainly at a higher level, as I have indicated, as well as a far greater number of programs, such that in brief I concluded that there was program inequality, rather substantial program inequality.

Based on these indicators in the mid-1960's, between the two sets of institutions, with the traditionally white institutions I found to be of higher quality and broader [105] missions.

MS. YOUNGER: For the Court's convenience, the Bruton Study to which Dr. Conrad has referred to is Government's Exhibit Number 29.

Q. Dr. Conrad, what conclusions did you reach in terms of the issue of program quality in the traditionally white institutions and the traditionally black institutions from 1954 to 1980?

A. To 1980?

Q. 1980, yes.

A. Well, I did another—I looked again in 1966 to see what had happened.

Over the ten year period from the 1950's to the 1960's, both sets of institutions did add—did add a number of programs, and I have several tables in the text. I don't know if you want to refer to them, but I could summarize, I think, this way.

By the mid-1960's, all five of the traditionally white institutions, that included again the three comprehensive institutions, plus Delta State, and—the three traditionally white institutions, University of Mississippi, Mississippi State, and the University of Southern Mississippi, Delta State University and—oh, Mississippi University for Women.

I am sorry. I have been sitting here too long, I guess—all five of them offered graduate work by the mid-1960's. [106] The—at the TBI's by the mid-1960's, there were only a total of three master's programs that were offered. All of them offered at Jackson State University.

So, in terms of the level, kind of range or scope of programs, the traditionally white institutions had expanded their scopes modestly over this ten-year period, such as two more institutions had added graduate programs, in contrast to ten years earlier, but there were also programmatic gains relatively modest in terms of the number of programs, both in the traditionally white and traditionally black institutions.

Overall, the pattern of inequality that I found to exist in the mid-1950's with regard to the level, number and range of program offerings, was roughly the same in the 1960's, particularly the mid-1960's.

I then looked at the period from 1966 to 1974. A period that in this state, like in so many other states across the

United States, was a period of considerable growth in higher education.

Of course, what we found in this period was major expansion in this state, like so many others. Many, many programs were offered. New programs were offered. This is the major growth period in the State of Mississippi in terms of higher education.

Of those new programs that were initiated, the TWI's or traditionally white institutions added many more.

[107] Basically, the same general pattern of inequality existed in 1974 that had in 1966. I am not saying that it was exacerbated over this period. I am suggesting that the program differentials in terms of these indicators of number and level or range of program offerings were such that the basic structure of inequality that had existed all the way back in the mid-1950's and earlier, apparently, continued to exist.

I think particularly notable that in terms of the scope or level of programs offerings that in the mid 1970's, 1974 specifically, that the traditionally white institutions offered the only doctoral program in the state. The three comprehensive traditionally white institutions offered—All offered doctoral programs.

In addition to looking at program growth in the mid 50's and the mid 60's and the mid 70's, as it were, across the eight institutions, I thought it was also important to take a look at the growth of the resident and degree granting centers in the State of Mississippi from 1954 to 1974.

That is, I think, particularly important in this state, because Mississippi, more than almost any other state that I know of in the country, has utilized off campus education as a vehicle for helping to provide access to higher education to people from throughout the state.

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[109] The—If I were to summarize, then, over this twenty, twenty-five year period that you asked me about from 1954 to 1980, I would say that there was expansion both in the traditionally black and the traditionally white institutions, and both of them began to offer programs at slightly higher levels in a few instances and more had a greater range of programs.

In addition, as I have just mentioned, the—there was a rapid growth in the off campus education in the State of Mississippi. That, by and large, was—was choreographed by the traditionally white institutions.

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[121] If I were to respond to the entire period, I would say that what is significant is as follows. In 19—in 1955, we found a pattern of instructual inequality between the historically black and the historically white institutions, but that the traditionally white institutions offering much more comprehensive program offerings, programs at a higher level, many more programs, at the same time the traditionally black institutions, as I have said before, were relatively small, smaller institutions with much more modest admissions over the ensuing twenty-five year period.

There was a growth, programmatic growth in both sectors, in both in the traditionally white and traditionally black institutions, but notwithstanding the enhancement of both of the program offerings and traditionaly black and the traditionally white institutions.

I think the important fact is that the basic structure of inequality that existed in 1954 and 1955 as regards academic programs continued to exist in 1981.

Q. Did you examine program equality into two sets of comparative institutions in 1980?

A. I did.

Q. All right. What, if anything, did you find?

A. I looked at program equality in 1980, because I wanted to take a systemic look at where the respective of the sets of the institutions were in that year, and in order to—[122] by way of backgrounding, in order to look at program equality in 1981, I wanted to look at some important indicators, I thought of relative status for programs in these two sets of institutions.

I looked at four indicators of program equality in 1981. Three of them I have been talking about all the way through. Namely, the number, level and range of the program offerings. And then I added a fourth, which is a very direct measure of quality, and that is I looked at the quality as measured by professional accreditation.

Sc, those were the four indicators that I used.

Q. Were other indicators that you would have liked to have looked at?

A. Very much so.

Q. What were those indicators?

A. They would include the indicators looked at in 1986 and 1987, primaily the spring, as well as some other ones. One of the problems with using indicators, it is often hard to get data on certain kinds of variables like class size, for example, but I would—had I gone back and been able to do a fuller more complete approach in 1980, 1982, for example, I would like to have looked at faculty vitas and get some better sense of the faculty, scholar productivity in particular.

I think that would be important to do. It would tell [123] me some things about program quality, so I would use a broader range of indicators than I did in 1980. This is fairly—I don't want to say too narrow, but it is a—I would like the band to be wider in looking at indicators of quality—of quality, but at the same time I think I can say

that one can get a handle on the program offerings by looking at accreditation reports, reports that the professional groups look at for quality of programs.

Q. Dr. Conrad, I would like to direct your attention now to table sixteen, seventeen, eighteen and nineteen, which are Government's Exhibit 496, 497, 498, and 499.

Will you go through each table and explain how it was constructed and state what conclusions you reached with respect to what particular table?

A. Let me begin with table sixteen. That tells us something about the number of programs and offerings when we compare the two sets of institutions, the traditionally white and traditionally black.

On the left-hand side is certainly the level of the program offering, certificate all the way through doctoral and then you have your institutions located across the horizontal axis.

You can see, for example, the number of programs listed at each level for the University of Mississippi or for J.S.U., for that matter, over on the right-hand side of the page.

[124] You see, for example, that—Now, Mississippi State University offered a total of two hundred and four programs in 1981, while Jackson State University offered a total of eighty-eight.

As you can see here, the—by way of explanation, that the traditionally white institutions in 1981 all offered the traditionally—the comprehensive traditionally white institutions, University of Mississippi, Mississippi State University, and the University at Southern Mississippi offered many more programs than the three traditionally black institutions.

There is, and you find this over the thirty year period, rough comparability in the number of program offerings

between Jackson State, Alcorn State and Mississippi Valley and the two that are now classified for the Board of Institutions of Higher Learning as regional. Namely, white institutions. Namely, Delta State University and Mississippi University for Women.

Q. Table seventeen, Exhibit 497.

A. Page seventeen is just an aggregate of table sixteen, and what you see is when you group institutions you see, for example, that the average number of programs in the traditionally white institutions at the baccalaureate is seventy-seven. The comparable figure in the TBI's is forty-one.

[125] If you go down to the doctoral, for example, average number of programs per institution is twelve point two, and the figure as you see here. In the other you see only one as we said, doctoral program.

Q. All right. Table eighteen, Exhibit 498?

A. Range may be used as—let me define range. Range refers to the number of fields in the HEGIS typology that we discussed earlier, as you see here. We will list for each institution degree levels.

By way of interpretation, you will see here that the traditionally black—white institutions tend to offer more programs across degree levels at the bachelor's level.

For example, the University of Mississippi offers twenty-one programs in twenty-one major fields, while Jackson State University offers programs in fourteen.

You can go all the way down to the doctoral level, where the University of Mississippi offers them in twelve major fields, while there is, of course, just one at Jackson State and none at the other two.

Table nineteen is, again, an aggregate of that. The average—you can tell the average number of major fields per institution, and you see at the bachelor's level, the

average number of major fields appear in the traditionally white institutions is nineteen, and the comparable figure on the traditionally black institutions is twelve point seven.

[126] It gives you a notion of some indication of the range of program offerings.

Q. What does professional accreditation mean?

A. There are two major kinds of accreditation. One is regional accreditation, done by a regional accrediting association like the Southern Association or North Central. The other is professional accreditation.

There are many fields, including fields in the liberal arts and sciences, but notably in the professional programs that are credit programs, from chemistry to business and certainly education, the major disciplines we usually think of. Those visits are made on a periodic basis. Judgments are made about whether a particular program should or should not be accredited.

Q. All right. Will you review table twenty and state what conclusion you reached with respect to that exhibit, and also table twenty-one?

A. If I may explain just a little bit more on table twenty. There is a column that shows the number eligible for accreditation, recommending that. Not all programs were—can be accredited.

This figure refers to the number of programs that are reviewed for purposes of accreditation or as the case may be, nonaccreditation.

We find here in table twenty that across the traditionally [127] black institutions of all the programs eligible, professional programs eligible for accreditation that only fifty-two percent, and I say only because that is really a very low figure. Only fifty-two percent are or were accredited by their respective accrediting agency.

In the traditionally white institutions, the figures are quite a bit higher. For example, at the bachelor's level in the aggregate, you find that seventy-two percent of the programs at the bachelor's level are accredited of those that are eligible, so there is a fairly—in terms of interpretation of the table, the traditinally white institutions are more likely to have accredited programs than are the traditionally black institutions in 1981.

Q. All right. Table twenty is Government's Exhibit 500.

A. Table twenty-one, which you also asked about is really the breakdown of that. It is across the institutions. It lists all eight institutions, and it shows for each one the member and the degree level, the number eligible for accreditation and the number accredited and the percent of accreditation.

Q. Table twenty-one is Government's Exhibit 501.

Now, Dr. Conrad, what overall conclusions did you reach regarding program equality in 1981?

A. Based on the indicators that I have—used at that time, I concluded that—that the programs in the traditionally [128] white institutions were of higher quality than in the traditionally black institutions.

I would want to emphasize that I would like to have—be able to use some additional indicators, but clearly they were unequal, and I think a particular point is the fact that for the five traditionally white institutions were doctoral granting institutions, while only one of the traditionally black institutions was a doctoral granting institution.

In the two remaining traditionally black institutions, they only offered a couple of master's programs, not all of which were even accredited, so that the evidence based upon the indicators that I have seem to be quite compelling that there was, simply put, inequality in the program

offerings across the two sets of institutions, with the traditionally white institutions having programs of higher quality.

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[130] Dr. Conrad, I would now like to direct your attention to the issue of program quality.

Would you identify the indicators that you utilized in 1987?

A. Yes. I used four curriculum indicators, the same four [131] that I had used in 1980. I—in addition, I used—I used four additional indicators, as follows.

A fifth indicator had to do with the library quality. Particularly, the number of book volumes in libraries, and that is a measure of resources.

So, I had four indicators of curriculum, the same four that I used in 1981. I had one indicator in 1987 in addition that related to resources.

I also used two additional indicators, could be called indicators six and seven, that are related to qualifications of faculty, faculty educational background.

One of those two indictors was the percent of faculty with their doctorate. The other indicator refers to the percent of faculty with their highest degree from a research university one, and, finally, my eighth
to do with students and student quality.

I used the ACT test score of entering freshman as an indicator of the student quality.

So, in short, I used eight indicators that were collapsed into four general areas. Those four areas being curriculum, resources, faculty and students. Each which can be conceived of as a dimension of program quality.

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[137] Q. Table ten, Exhibit 685, (j).

A. Table ten again indicates the number of eligible programs for professional accreditation in such fields as art, chemistry, business and so on, and the program is actually accredited.

It shows, for example, in the historically black institutions, sixty-nine programs eligible for accreditation in 1986. Although the date, I should emphasize, is from 1984, that being the most recent date available, such that these figures may be off modestly.

Sixty-nine total programs were eligible in 1984 in the traditionally black institutions. Forty-eight were accredited for a percentage of seventy.

The comparable figure in the traditionally black institutions overall is eighty-two percent. [138] Overall, the conclusion is that TWI's have higher accredited percentage of the accreditation. This extends not only to the grouped institutions, that is to say, traditionally black as compared with the traditionally white institutions, but also across all six comparative sets.

Q. On a point of clarification. Overall, the historically black institutions is seventy percent rather than eighty-two?

A. I am sorry, seventy in the traditionally black and eighty-two in the historically white or traditionally white.

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[153] Q. Okay. Dr. Conrad, could you just summarize briefly what happened regarding program inequality between the years 1981 and 1986?

A. Well, I think it generally was a very modest progress. The gap was in terms of professional accreditation status—was narrowed slightly.

In terms of the number of program offerings, there was—in numerical terms, the traditionally white institu-

tions deleted many more programs but the percentage decrease was about the same as in the traditionally black institutions, only slightly greater.

[154] In terms of the level of program offerings, there was very little change over this period. With the notable exception that M.U.W. dropped the doctorate.

Finally, as regards the range, there was a slight narrowing. So, basically, using these four indicators, what we see here is that there was an ever so modest narrowing of the gap in terms of program quality. I think roughly it stayed the same in my professional judgment.

I think the important fact is that, opinion, conclusion that I would state is that this basic structure of inequality that we found in 1981, and much earlier, going all the way back to 1954, has simply existed. It has not been increased particularly with this recent five-year period, but the structure of inequ[illegible] the institutions are not any closer together.

The tradition[illegible] white institutions continue to offer many more programs at higher levels. I suppose in interpreting what happened between 1981 and 1986, it is important to point out the possible influence of the mission statements of the Board of Trustees of Higher Learning, which is dated November the 19th of 1981.

That statement could be important because it circumscribes the scope of program offerings in the traditionally black institutions.

What it says, of course, is that proposed new programs [155] cannot be started that fall outside the role and scope. Two of the historically black institutions are classified as regional institutions and regional institutions are primarily baccalaureate level institutions, allowed to keep graduate programs only in a couple of areas. Education, for example, and further, Jackson State was classified as an urban

university, where the admission is less clear than is the case of the comprehensive universities, at which there are three, all traditionally white institutions.

So, it may well be that the—that the mission statement of the Board of Trustees, which delimited rather severely the missions of the traditionally black institutions, precluded in lots of meaningful ways the development and enhancement of the traditionally black institutions, though at the same time, as I said earlier, there were these incremental improvements, as in the number of programs accredited. A kind of modest narrowing of the gap between the traditionally white and the traditionally black institutions, but whatever the explanations that might be proffered, the fact remains that the structure of inequality, at least based on all of the data I looked at, and these indicators, the structure of inequality simply continued to exist in 1986 and did not differ appreciably from what was the case in 1981.

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[162] Q. Dr. Conrad, yesterday when we ended our discussion, we were talking about program quality, and you stated that there are eight indicators of program quality.

Could you state for the Court now the reasons why you chose the eight indicators?

A I—yes. I chose those particular eight indicators based on the literature on program quality, which is quite considerable.

There is a large body of opinion and essay and conventional wisdom on program quality, but more immediately I also chose the indicators because of research that has been done in the past dozen years or so that has helped to identify or isolate factors or indicators of program quality.

In fact, I have done a good deal of research myself in that area trying to identify factors that are associated with programs that are taken to be of high quality so that is why I chose the particular eight indicators that I did.

It is founded in the literature and including the research on program quality in higher education.

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[186] MS. YOUNGER:

Q. Dr. Conrad, were programs added at TWI's between 1981 and 1986?

A. To the best of my knowldge, they were not.

Q. Did you look at the consequences of efforts to reduce program duplication and the number of unique unduplicated [187] programs in TBI's?

A. I did, yes.

Q. All right. How did you go about investigating that?

A. Well, I think that what is important in looking at duplication, and that includes unnecessary duplication, is not simply duplication per se and unnecessary duplication, it is what it says about uniqueness.

Of the both traditionally white and traditionally black institutions, uniqueness is the obverse of duplication.

So, it is important to me that I look at in—look in the context of vigorous—a lot had been happening in the program area between 1981 and 1986. A lot of programs were deleted. Some unnecesary programs were deleted between comparative sets of institutions that I have talked about, but I wanted to help interpret that or help make sense of that.

In other words, what does this tell us about the uniqueness of the traditionally white institutions and the traditionally black institutions?

It reduced duplication but what were the consequences of this reduction in duplication, so I went back to the—the

inventory for 1981 and 1986, and I—and I did some—essentially just adding up of programs, because I wanted to know what—how much uniqueness was there at these institutions and, particularly, at the historically black institutions. [188] I could have done it as easily for the historically white institutions, but they clearly seem to have a great many more programs and has unique programs that I did not do that.

So, I looked at the historically black and on table nineteen, I displayed the figures of—when I looked across those years in terms of uniqueness, what is it that is unique about these traditionally black institutions?

That seemed to be important and—

Q. That is Exhibit 685(s)?

* * * * *

[189] MS. YOUNGER:

Q. Dr. Conrad, referring back to table nineteen, would you state how it was prepared and state your conclusions?

A. Again, what I did is really for each of the five [190] comparative sets, I thought this made the most sense in looking at the five comparative sets across the two years was to go through the inventories for each of those years and identify the unique—programs that were not offered in the comparativel traditional white institution and that were also nonessential, that were noncore programs.

Again, with the intent of trying simply to find out did the black institutions have a number of—a good number of unique nonessential, in this case, bachelor's programs, since they are basically baccalaureate level institutions with the exception of Jackson State, and when I went through and added up, the programs that you can see there in the case of Jackson State University in 1981, there were nine unique nonessential or noncore programs. Pro-

grams like a business program or a computer—or an education program or so on. The—

In 1986, there were seven. There was a change then of a minus two. As you see, the pattern is the same all—across all five comparative groups. What I think is relevant, and as I understand the issues at hand is that what the table really says, and I think it is—this table is as—is even more instructive than the duplication tables, maybe not combined but what it says is that in 1981, there were not very unique nonessential programs offered in the traditionally black institutions, while we know that there were a good many in the traditionally white institutions, the pharmacy [191] schools and the law schools and engineering schools and so on.

The historically black institutions, there simply weren't in 1981, and even fewer in 1986 when the inventory was generated.

Again, the context for this is that there were a lot of efforts in the state as we have seen to reduce unnecessary duplication and it did get reduced in some of these, the comparative sets with the cross five, but the consequences were not such that the traditionally black institutions increased their number of unique programs. Whereas those—that could have been a consequence of the vigorous activity in terms of program review and reduction efforts in the state.

Q. Can you identify the unique unduplicated programs?

A. Yes. I thought it was important to get a sense of what were these programs for whatever purposes are relevant here.

Q. Could you refer to table twenty?

A. Table twenty, I have identified—

Q. Which is Exhibit 685(t).

A. For 1986, I identified the unique unduplicated, nonessential baccalaureate programs in TBI's in the five comparative sets.

Just to give a sense of what these programs were, at Jackson State, Mississippi State, Jackson State offered secretarial studies, that was not offered at M.S.U., mass [192] communications was not. Mathematics education was not, the teacher education program, social work in baccalaureate degree, urban studies in industrial technology.

Another comparision might be Jackson State University, Southern Mississippi. The unique programs at J.S.U. were secretarial studies, mass communications, math ed and urban studies, baccalaureate degree.

So, again, that gives you a—I wanted to get a—some sense of the texture of the kind of programs that were offered at the traditionally black institutions.

Not only wanted to know if there were a good many unique programs, unique nonessential programs but some kind of a texture for what were the programs offered at the historically black institutions, and I think tables nineteen and twenty respond both to the quantitative dimension of how much uniqueness that a historically black institution provides in perspective about the consequences of the activity between 1981 and 1986, and also say something about the character of the—the texture of the kind of programs that are offered at the traditionally black institutions.

Q. Dr. Conrad, the programs that are identified in table twenty, Exhibit 685(t), are they considered high demand programs?

A. No. I think in all candor in looking through the list of them, it is—it would—it would be a severe overstatement [193] to call, I guess, any of these high demand pro-

grams at the present time. Though, in particular context, and I have not—in particular context, some of those programs may have been very much meeting the needs of particular localities, but generally when we talk about high demand fields of recent years, those are all in professional fields, as I think we all know.

Now, with two-thirds of the undergraduates majoring in professional fields in American higher education, those growing fields, of course, have been in areas like computer science and notably in business related fields. Education still has a large number of students, even though it has declined its relative market share in the last few years.

But, in general, to answer your question, certainly nationally these are not the kind of programs that draw students from afar to come to particular institutions in great numbers.

Again, I would qualify that by saying that I have not looked at the enrollment data in state. It may be that there are a large number of people that enroll in music education at Jackson State University, but I would not—I would not guess that. I would not make that guesstimate if I were called on to make it.

Q. Now, based upon your review of the academic programs in the state for the period 1986, what are your overall [194] conclusions?

A. I am sorry, could you repeat the question in terms of just duplication?

Q. Duplication, yes. What are your overall conclusions based upon your analysis from 1986?

A. Well, following from what I have said so far, and the rest was just repetition, I would say that overall there has been very—very modest gains in terms of reducing program duplication.

There has been some gains in program duplication, some modest reduction in the amount. Relatively little

gains in terms of unnecessary program duplication, which is, I think, really an important part of looking at the whole picture of duplication. These noncore programs where you look and find out if they are offered in comparative institutions, and you find out that they frequently are. Whether we are comparing grouped institutions or five comparative sets of institutions.

I think by way of conclusion that particularly noteworthy after having looked at all of this program activity in the State of Mississippi, a large number of programs suspended and consolidated and so on, you look at the consequences of that for the—we know what they are for the traditionally white institutions, but in terms of the traditionally black institutions, the consequences seem to me fairly straight forward, and they are, that there simply are not a good many [195] unique high demand programs that are offered in historically black institutions.

In fact, there are fewer in 1986 than there were in 1981. In other words, there is really less uniqueness about the traditionally black institutions in terms of their program offerings in 1986 than was the case in 1981. There is not much of a difference, a very modest decline. We are only talking—literally, a handful and a half of programs that are really unique in these traditionally black institutions in 1986.

* * * * *

[245] Q. Under that you have Mississippi Valley State University, total programs of sixteen.

Could you please give me your opinion as to whether a university with a total program of sixteen, having documented the programs in Appendix C as to whether Valley State University could be classified as a university?

* * * * *

THE WITNESS: Well, I don't think there is any rule of thumb, easy rule of thumb as regards the number of programs.

It seems to me that the important issue is—are key core programs offered, very essential kind of programs.

As I look through at Mississippi Valley State University, I would be concerned, for example, that there is no German [246] or Spanish or French, there is no physics, or chemistry, or economics or history or political science.

What that means is that you don't—you really don't have an inner structure, so you cannot even offer what is usually considered to be the core components.

At any institution that I have ever studied or been to, and I probably have been to five hundred and studied a few hundred more, if you are going to get a good solid education, regardless of what field you major in, it seems to me—and I cannot believe that anyone would disagree with this—that it would be nice to have some background in the social sciences, for example. They are not offered at Mississippi Valley.

I would be concerned about the ability of the institution to provide an essential—provide a high quality baccalaureate education.

Having said that, I would want to look much more carefully at the programs that are offered and the kind of faculty that are at Mississippi Valley State University.

It may be that they are faculty that are well equipped to reach the social sciences, but looking at the absence of programs in these areas, one would not necessarily predict that there were faculty at the institution who are trained to teach, say, in the social sciences.

So let me say by way of summary that I would have some very genuine concerns about Mississippi Valley's ability to [247] provide basic undergraduate education,

just by looking at not only the number but the kinds of programs that are offered. They just don't seem to be enough or the kind of disciplines there to provide a foundation for baccalaureate education.

Again, I would emphasize for the record that it is a matter that I want to look into much more. I am simply saying that I would come into such an inquiry with some very genuine concerns.

* * * * *

[254] Q. You have never served as a state-wide administrator of a public system, have you?

A. No.

Q. Or on the governing coordinating board of any system?

A. I have not.

Q. And you have never served on the staff of any governing board, have you?

A. No, sir.

Q. You're not an expert in the area of higher education desegregation, are you, sir?

A. Absolutely not.

* * * * *

[256] Q. In the context of your opinions then, Dr. Conrad, isn't it true you have not investigated and you are not addressing the reasons for program distribution in Mississippi?

A. Oh, absolutely. As I have said late this morning, I simply, I think it's inappropriate for me to comment on motivations, intent and so on. I'm tendered here, I presume, because of my background in academic programs, not as a psychologist.

Q. You have not evaluated the need for any program, have you, sir?

A. I have not.

Q. And you have not evaluated the demand, the educational [257] demand for any program, have you, sir?

A. No, sir.

Q. And you have not evaluated the cost of any program, have you, sir?

A. No.

Q. And you have not evaluated any institution's ability to handle a program, have you, sir?

A. I have not.

* * * * *

Q. You're not expressing any judgment today, are you, sir, in the educational judgment as to whether any programs should have been awarded?

A. No, sir.

[258] Q. And you're certainly not here today to express any educational judgment as to whether any programs should have been terminated, are you?

A. Absolutely not.

Q. And you're not expressing today any educational judgment as to whether any program should have been consolidated?

A. No, sir.

Q. Nor are you here today to express any educational judgment as to whether any program should have been transferred?

A. That's correct.

Q. You have not investigated whether the elimination of any additional programs would decrease the level of in-state access to higher education for Mississippi citizens, have you, sir?

A. I have not.

* * * * *

Q. That's my point, though, You're not looking at any particular institution per se, are you?

[259] A. Only in reference to other comparative institutions.

Q. Strictly on a comparative basis?

A. That's correct.

Q. And when you do this, you are comparing the three predominantly black institutions with the five predominantly white institutions on a group basis?

A. Yes, sir, I am.

Q. You compare Jackson State with the University of Mississippi?

A. I have, yes.

Q. And also Jackson State University with Mississippi State University?

A. I have.

Q. And Jackson State University with the University of Southern Mississippi?

A. I have.

Q. And Alcorn State University with the University of Southern Mississippi?

A. I have.

Q. And in doing this, you're comparing institutions with different missions, aren't you, Dr. Conrad?

A. I would say in some instances I'm comparing institutions with somewhat differing missions. Absolutely, yes.

* * * * *

[260] Q. Are you aware of any classification system that groups Jackson State and the University of Mississippi and the University of Southern Mississippi and Mississippi State University?

A. No. I was going to say, if I might expand briefly?

Q. If you will, just answer my question, please.
A. No, I'm not.

* * * * *

[262] Q. Difference in institution means these institutions are doing different things, doesn't it, Dr. Conrad?

A. It implies different things. A range of program offerings i much more limited in the baccalaureate institution, it means by definition that the baccalaureate institution isn't offering a good deal of advanced doctoral training, it doesn't place as much emphasis on research, and so on, as would be the case at the University of Southern Mississippi, yes.

Q. You recognize, don't you, Dr. Conrad, within a state-wide system, especially when you consider limited resources, that it's extremely important that distinctions exist?

A. Yes, sir. I've spoken at length on that, as you recall from my deposition when we made references to the State of California.

Q. And you have recognized, have you not, that curricula should be differentially structured to meet the educational needs and objectives of the students within the state?

[263] A. Absolutely.

Q. Now, Dr. Conrad, particularly where respect to the number, level and range of programs, you would expect to find differences between institutions when you compare them across mission lines, wouldn't you?

A. In general I certainly would expect to see some differences, yes.

* * * * *

Q. Dr. Conrad, other than the predominant racial student body presence at the institutions in Mississippi, is

there any basis for your comparison of Mississippi State, Alcorn State and Mississippi Valley State and Jackson State with [264] the five remaining institutions?

A. None that I can think of.

Q. No educational basis at all, is there?

A. I never am quite sure what you mean by educational basis, but as I think I understand your intent, no. I mean, I might be comparing some of those institutions with some other kind of reasons across different institutional types and so on, if I was doing a study, but in terms of that particular configuration I can think of no reason why I would do it.

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[265] Q. Have you examined the issue of program equality on any basis other than what has been termed racial identifiability of institutions?

A. No.

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[266] Q. That's right. You're not in any way comparing that the degree of duplication is related in any way to the racial identity of the institution?

A. I'm certainly not suggesting any such thing. I'm merely showing that when I compared these sets of institutions that I found a very considerable amount of program duplication, including unnecessary program duplication. I am saying nothing at all about the reasoning or motivation for why something may have happened.

Q. With respect to your definition of duplication, Dr. Conrad, your definition is not based upon courses being offered in programs, is it?

A. It is not.

Q. Your definition is not based upon the demand for any program, is it?

A. It is certainly not.

Q. Your definition of duplication is not based upon the quality of any program, is it?

[267] A. It is not.

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Q. And your definition of duplication is not based upon the academic demands that are being placed upon students, is it?

A. It is not.

Q. And your definition of duplication is not based upon the number of students enrolled, is it?

A. It is not.

Q. And your definition of duplication is not based upon the kind or quality of students enrolled, is it?

A. It is not.

* * * * *

[268] With respect to the definition of duplication, Dr. Conrad, to make sure I understand what you have done, when you take the three predominantly black institutions and compare them with the five predominantly white, are you saying, sir, if any one of the black institutions and any one of the predominantly white institutions are offering the same numbered HEGIS discipline that duplication exists?

A. That's correct. As I stated yesterday.

Q. That would mean that if Mississippi Valley State University and the University of Southern Mississippi were both offering English, there would be duplication under your definition?

A. Yes. Absolutely.

Q. Or if Alcorn State University and the University of Mississippi were both offering accounting, that would be duplication under your definition?

A. Yes, it would.

Q. Or if Jackson State University and Mississippi University for Women were both offering chemistry, that would be duplication?

A. It would.

* * * * *

[269] Q. There is no duplication under your definition if all three of the predominantly black institutions are offering a discipline, but none of the predominantly white institutions are offering it?

A. That's correct.

Q. And the converse would be correct, if all five of the predominantly white institutions were offering a discipline that were not offered by the three predominantly black institutions, there would be duplication.

A. That's correct. In the context of the question posed

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[274] Q. With respect to your definition of unnecessary program duplication, I believe you stated the only acceptable program duplication would be in the historically defined basic arts and sciences. Is that correct?

A. That's the necessary duplication, yes.

* * * * *

[275] Q. That means, sir, as I understand it, that business and commerce, accounting, business statistics, banking and finance, investment and securities, business management and administration, real estate, insurance and so on down the list, any of those programs in your judgment, if there were duplication, that would be unnecessary?

A. No, I—these are not core programs according to my definition.

Q. That's my point.

A. So any duplication would be unnecessary, that's correct.

Q. And if we looked over at the 0800 area, under education, [276] where you find secondary education and elementary education and so forth, those are not core programs, are they?

A. Absolutely.

Q. Any duplication there in your judgment

A. Would be unnecessary.

Q. You consider all duplication at the master's level to be unnecessary?

A. I do.

Q. Regardless of discipline?

A. That's correct.

Q. Looking at table four, Dr. Conrad, 685 D, as I understand what you're saying, for example, if we looked at the foreign languages, all eight institutions in Mississippi could offer Russian and that would not be unnecessary duplication?

A. That's correct.

Q. All eight institutions could offer astro-physics and that would not be unnecessary duplication?

A. That's correct.

Q. But no two schools in this state can offer accounting under your definition, can they, to avoid unnecessary duplication?

A. In the comparative sense, yeah. In the context of which we are all aware of that I'm talking about here, yes.

Q. No two institutions could offer banking and finance, could they?

[277] A. That's correct.

Q. And no two institutions could offer secondary education, for example?

A. That's correct.

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[281] Q. So you approve of both Mississippi State and Alcorn State offering agriculture, agronomy and some 50 other programs listed here on table five?

A. If you offer them. As you know, they don't offer many of these programs.

Q. You said you approve of that under your definition?

A. Yes.

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[289] Q. I'm trying to get a comparison here without regard to the three major doctoral granting institutions. If you compared Jackson State with Delta State on a program basis, Jackson State has 53 programs whereas Delta State has only 37?

A. I would say in general Jackson State has more programs.

Q. Thank you.

A. At a higher level and so on.

Q. If we compared Jackson State with Mississippi University for Women, Jackson State has 73 programs whereas Mississippi University for Women has only 27 total?

A. Certainly at the baccalaureate level there's a glaring difference. I think, if I may say it more precisely, the

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Q. You said there was a glaring difference, I think, at the baccalaureate level between Jackson State—

A. Yeah.

Q. —and Mississippi University for Women?

A. Yeah.

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[291] Q. With respect to accreditation, Dr. Conrad, it's true, is it not, that there are two major standardized assessment [292] procedures for assessing program quality in the context of accreditation?

A. Yes, there are.

Q. One of those is regional accreditation, isn't there?

A. Yes, That's the one we discussed yesterday.

Q. Regional accreditation is done within this area of the country by the Southern ASsociation of Colleges and Schools?

A. Yes.

Q. At all Mississippi institutions, both white or black or regional?

A. To my knowledge they all have the imprimator of SACS, they are accredited at this time.

Q. What that means is they have met SACS' standard with respect to faculty. Isn't that correct?

A. It means that, among other things.

Q. And the other standards would be, facilities would be one?

A. That would be one.

Q. Resources would be one?

A. That's commonly one.

Q. Students would be one?

A. Yes.

Q. Libraries would be one?

A. Yes, sir. Yes, yes, yes.

* * * * *

[295] Q. Isn't it true, sir, that Jackson State University, at that institution, that 82 percent of their programs are accredited?

A. Oh, it is, and that's something that I noted in the narrative. I guess that's why, as an academic, I would like

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out. That's absolutely true. The figure is 82 percent whether you calculated it yourself or got it from my report. That is true, the figure is 82 percent and that percentage compares quite well.

[296] The University of Mississippi, now remembering that's one of the institutions I compared it to, is 91, Mississippi State is 83, which is only one percent higher, and in fact USM is a little lower, it's at 77 percent. So I do refer,

[297] Q. How many programs does Delta State have accredited outside the area of education?

A. I don't hve the raw data—I do have the raw data in the appendix, as you know. I could figure it out. I think very, very few.

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[328] Q. I believe you indicated, did you not, Dr. Conrad, that in California they have a system where you have the University of California system, the California state universities and community colleges?

A. I did. I discussed it in my deposition and alluded to it earlier this afternoon.

Q. You indicated that students may be admitted into the University of California system if they rank in the top eight percent of their class?

A. I said approximately eight or nine percent.

* * * * *

Q. You indicated that students need to be in approximately the top one-third of their class to enter the state college system?

A. That's correct.

[329] Q. And I believe you stated that the University of California system required standardized test scores somewhere in the range of twelve hundred on the SAT?

A. I did. I stated that in my deposition. I also qualified that and said I was much more certain about the percentage than I was an SAT or ACT score. Generally, when you would convert students in the upper eight percent of their class you would get fairly high ACT scores.

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[340] **TESTIMONY OF HARVEY H. KAISER**

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. PETTENATI:

Q. Dr. Kaiser, would you state your name for the record?

A. Yes. It's Harvey H. Kaiser.

Q. What is your home address?

A. 304 Brookford Road, Syracuse, New York 13224.

Q. What is your business address?

A. Syracuse University, Syracuse, New York 13244.

Q. What is your occupation?

A. I'm a senior vice-president of Syracuse University.

Q. How long have you held that position?

A. Since 1985.

Q. What position did you hold before that one?

A. I was a vice-president appointed in 1972 at Syracuse University.

Q. What are your responsibilities as senior vice-president of Syracuse University?

A. I report directly to the chancellor of the university. I'm a member of the chancellor's cabinet, the policy-making body. My administrative responsibilities are for facilities administration and general administrative services, as well [341] as fund-raising assignments and institutional relations.

Q. Do you have any academic responsibilities?

A. I have an appointment as assistant professor as urban and regional planning. Although I'm not teaching now, I'm involved in the thesis and dissertation committees, architectural juries and seminars.

Q. Where did you go to college, when did you obtain your degree, and what degree did you attain?

A. I received a bachelor of architecture from Rensselaer Polytechnic Institute in 1959, a master of architecture from Syracuse University in 1965, and a PhD in social science from Syracuse University in 1974.

Q. Do you hold any professional licenses?

A. Yes. I'm a registered architect in New York state and I hold a National Council for Architectural Registration board certificate.

Q. Are you a member of any professional organizations?

A. Yes. The American Institute of Architects, the Association of American Universities, Association of Governing Boards, the Association of Physical Plant Administrators, National Association of College/University Business Officers, among others.

Q. Have you published any articles or books or monographs about the field of higher education and facilities?

A. Yes.

[342] Q. Could you name a few of those, please?

A. Just the most recent ones, a book called Crumbling Academe, published by the Association of Governing Boards, another book called Facilities Audit Workbook published by several higher education organizations. A book called Managing Facilities More Effectively, published by Joe Z. Bass. Those are the recent books.

Q. Thank you. Have any of your publications been cited or recognized by authorities in the field of higher education facilities?

A. Yes, they have.

Q. How long have you been involved in the field of higher education?

A. Since I started to go to college or as an administrator?

Q. As an administrator.

A. Since 1972 at Syracuse University, and then prior to that actively as a professional architect with my own practice from 1970 to 72, and then as a partner in a large firm in Syracuse, where about half of the work was higher education. I also was appointed to the faculty at Syracuse University in 1967 as a lecturer and then full time in 1979.

Q. During your appointment as a lecturer what courses did you teach?

A. I taught undergraduate architectural design, third year design studio, and then a fifth year design studio and an [343] urban design graduate studio, and then I also taught urban studies seminar for several years to both. It was an upper division, undergraduate and graduate.

Q. Are you a member of any board of trustees of higher education?

A. Yes, I'm a member of the Russell Sage College Board of Trustess, that's in Albany and Troy, New York.

Q. How long have you been a member?

A. It will be going into my eleventh year.

Q. Could you describe your responsibilities as a board member of Russell Sage College?

A. Okay. I sit on the executive committee. I also chair the faculty affairs committee, and I also sit on the facilities committee, trustee nominating committee, the presidential assessment committee and now just formed a presidential search committee.

Q. Are you currently involved in any other activities that relate to higher education?

A. Most recently, and this is just ended, I was appinted by the White House as a member of the Fisk University Board of Advisors. That lasted about a year and a half.

Q. What type of university is Fisk?

A. Fisk is a private traditionally black institution.

Q. And where is it located?

A. Nashville, Tennessee.

[344] Q. What were your responsibilities as a member of this task force?

A. Well, overall, the appintment was based on a set of guide-lines prepared by the Secretary of Education to attempt to—the best way I can characterize it to rescue Fisk, which was in serious fiscal situation, in fact, suspended its operation briefly, and a group of people from around the country were appointed to be members of a board of advisors which actually set aside the Board of Trustees and each member then assumed a specific task force chair and mine was in facilities.

Q. And what re the results of the task forces involvement in Fisk University?

A. Well, the very specific results were regular meetings and producing a report to guide the administrative direction, and then, within my task force, we looked at the overall capital budgeting and priorities and I formed a volunteer task force for looking at the condition of facilities, and another volunteer task force for historic preservation, and those recommendations were presented. There is a very capable aggressive president who appears has stabilized the university financially, and is in fact increasing the endowment. I can't say my work in the task force is solely responsible, but I think the expertise brought in helped with the stabilizing of the institution.

[345] Q. Have you ever served as a consultant to any state-wide system of higher education?

A. Yes, I have.

Q. What systems?

A. The most recently, the State of Arizona, Maryland Board of Colleges, earlier the New York, State University of New York twice, and then internationally the association of Israeli universities.

Q. Okay. What did your work within those systems involve?

A. Generally, the guidelines. In Arizona most recently, reviewing consultant's guidelines on capital budgeting and planning for a new organization of the allocating of state monies for facilities, also systematic way to select priorities, to evaluate the institutionally submitted plans, and then guidelines for selection of architects and construction managers. That was in Arizona.

In the State of Maryland, I provided guidelines in conducting audits of the physical conditions of facilities. State Universities of New York, the earliest assignment was in 1962, which was developing a basic master plan for the expansion of the state university of New York system and later a follow-up to that several years later.

And then the association of Israeli universities, I was invited to evaluate their programs for capital budgeting, selection of priorities, the administrative organization for [346] managing facilities and generally guidance on the conditions I found at each of the seven universities.

Q. Do you currently serve on any committees at Syracuse University?

A. Yes. I'm a member of the University Senate, you're subject to appointment; currently I'm on the athletic policy committee; that's the only standing committee that I serve on, a couple of others appointed directly by the chancellor of the university.

Q. Have you ever presented any of your work at major higher education conferences?

A. Yes, I have.

Q. Could you name some of those conferences?

A. Well, they are sponsored by the association governing boards, National Association of College and Business Officers, Association of Physical Plant Administrators, American Council on Education, the Association of American Universities. The National Science Foundation co-sponsored a program, National Trust for Historic Preserves, sponsored another program, and there were several of those which I was the speaker, more than once.

Q. Have you ever conducted facility studies of statewide systems of higher education where issues of desegregation were involved?

A. Yes, I have.

Q. Okay. What systems were those?

[347] A. In addition to the Mississippi study, the staets of Alabama, Louisiana, and very limited study of two institutions in Ohio.

Q. When did you conduct those studies?

A. In Louisiana I began the study in 1979; in Alabama, I believe, I'm sorry, Mississippi started next, in 1980; I believe Alabama started in 1982 or 3.

Q. Who—

A. And, excuse me, Ohio was in 1984.

Q. Who hired you to conduct those studies?

A. The United States Department of Justice.

Q. Do you have any current responsibilities with respect to those cases?

A. Well, the current one we are engaged in, of course. The case in Louisiana went to, through depositon, and then a consent decree was signed, and I was requested by the Department of Justice to satisfy the appointment of a court supervisor, for the compliance with the consent decree.

Q. All right.

MS. PETTENATI: Your Honor, at this time I would like to offer United States 860(v) into evidence, Dr. Kaiser's resume.

THE COURT: Let it be received.

MS. PETTENATI: Now I would like to tender Dr. Kaiser as an expert in the field of higher education facilities.

[348] THE COURT: On facilities, any voir dire requested?

MR. RAY: Your Honor, if that's the extent of the tender, we don't need to voir dire him, but if they go beyond that, we want to reserve the right to voir dire the witness.

THE COURT: It's higher education facilities, period. Do you have any objection to that?

MR. RAY: No, Your Honor.

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Q. Dr. Kaiser, what importance do facilities have to higher education?

A. They are basic to an institution conducting its mission, although some organizations manage to conduct programs without them. Typically, they are clearly a basic instrument of a higher education institution built to accomplish its programs.

Q. What if any relationship is there between facilities, programs and enrollments at an institution?

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A. Facilities house academic programs and accommodate enrollments and therefore there's a very close interrelationship between them. The whole function of facilities administration or facilities in institutions is to bring [349] together the space to accommodate programs

and enrollments. The relationship is circular. Academic programs drive the need for facilities, enrollments drive the need for facilities, and then they continue around that circle, that availability of facilities allows you to accommodate the enrollments, of possibly expansion as well as to accommodate academic programs, the development of expansion or new programs. There's a very close relationship between academic enrollments and facilities.

Q. Have any studies been shown showing the relationship between facilities and the higher education institutions' ability to attract faculty and students?

* * * * *

Q. Are you aware of any studies that have been done showing the relationship between facilities and an institution of higher education's ability to attract and maintain students and faculty?

A. Yes, there have been published opinions about that relationship. For example, that two-thirds of the students who visit a campus will indeed apply for admission. However, there has just been published a book by the Carnegie Foundation for the advancement of teaching within the last six months, [350] and they survey students—it was a rather extensive survey—and 62 percent of the students interviewed in the survey reported that the facilities were the most important factor in their interest in the institution, much more than—it was 50 percent for academic programs and much less so for faculty and peers and so on. There are also opinions on the rentention factor; they tend to be individual institutions who regard the quality of facilities and the availability of things, such as housing, as being very important to attract and retain students.

Q. Dr. Kaiser, you mentioned the Carnegie Foundation published that study. What is the Carnegie Foundation?

A. It's a foundation endowed originally by Andrew Carnegie at the turn of the century and they have spun off a whole group of different subagencies, and there really became a good deal of distinction in the past decade, when they looked at—well, higher education was in a financial crisis, where it was going and they have also spun off most recently the Foundation for the Advancement of Teaching to look at qualitly of teaching and academic programs.

* * * * *

[353] Q. Did you visit each of the schools?

A. Yes, I did.

Q. When did you visit them?

A. I'm uncertain about the specific dates, but in 1980, I visited all eight campuses and again at the end of 1986 and in March of 87.

Q. How much time do you estimate that you spent at each campus?

A. Well, cumulatively during the two sequences, at least a day and upwards of three days.

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[356] Jackson State University was somewhat of a problem to me to reconcile the graduate research university role and the facilities and the equipment that I saw. It wasn't that heavily equipped for graduate research in the sciences or even in computing, as I recall. The campus itself is congested, there's quite a mixture of different architectural styles and age and design. It was a newly completed physical education building, I was quite impressed by in terms of its adequacy, that had just been completed. Student housing, knowing that [357] there had been expressed and data later showed me there was a strong need for housing, it was evident that that response had just been made, but that more would be necessary. I looked closely

at the reports about congestion and long-standing requests for additional space. Although there is open space and opportunities for buildings, certainly the campus would benefit by acquiring adjacent land in the surroundings of a mixture of deteriorated housing that don't really enhance the institution. Of course, Jackson State is identified as a traditional black institution.

The University of Southern Mississippi, in Hattiesburg, gives the impression of a graduate research institution. It's busy, it's vital, it's congested in the sense that city streets run through it, buildings are really quite densely sited, at least as compared to Ole Miss. High-rise towers for recent science buildings. There are attractive older buildings which either have been restored or I think at this moment are under restoration and a tract of new buildings. The general character, I going to repeat, about the vitality and the vigorous nature, it seemed like things were on edge, things were going on. In walking through the classroom buildings, the students, I got that sense of intense students on campus. As I recall there was a strip highway nearby, the access was reasonably good.

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[362] A. Just briefly the opinions I have about 1954 are derived directly form the Brewerton report of the IHL.

MS. PETTENATI: Your Honor, that's Government's Exhibit 29 that's he referring to.

THE WITNESS:

A. I would say the black institutions in 1954, that is collectively described as being unequal to the traditional white institutions, they were adequate for undergraduate education, and that's essentially the characterization in 1954. There are more detailed descriptions about each institution and again I accede to the notion that's 30 years ago and in a great period of transition, but at least it gives a benchmark for viewing.

[363] Coming to today, the character of the institutions, I would characterize Jackson State University as a resarch university, although it does not have, this is a conclusion, what I consider to be adequate facilities and equipment to support a graduate research university. I think all the other things I described about the character earlier apply. Mississippi Valley State back in 1954 was barely emerging, had only been founded a few years before that, and I think the first few buildings had just been built. It's now an undergraduate institution, I believe, it has only one master's program and the facilities are adequate to support an undergraduate institution.

Alcorn, again I think I'm repeating myself, but today it remains an undergraduate institution in terms of its facilities, and I think one would be hard-pressed to say that it could support the land grant activities as one would expect. ——

MR. GOODMAN: Your Honor, I didn't hear what he said.

THE COURT: The court reporter can read it back.

THE COURT REPORTER: Alcorn, again I think I'm repeating myself, but today it remains an undergraduate institution in terms of its facilities, and I think one would be hard-pressed to say that it could support the land grant activities as one would expect.

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[364] Q. Dr. Kaiser, what variables do you use to study the variables of resource allocation?

A. With respect to facilities, I took a look at the enrollments over the 30-year period, I looked at the amounts of campus space, for both gross square feet and assignable square feet, and I looked at the investment in plant.

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[366] Q. You also testified that you used investment in planning as a variable, could you define that, please?

A. Yes. Those are dollars expended for buildings, grounds, utilities and equipment.

Q. And why did you use that as a variable?

A. Well, it represents the state's allocation of resources. It to me would give an indication of the policies and priorities for maintaining a change in the character of the eight institutions. The data was also available in a consistent and uniform fashion.

Q. What conclusions did you reach in comparing these variables among the institutions of higher learning for the last 30 years?

A. Collectively or for each one?

Q. For each grouping. You can begin with the major research universities.

A. It may be a—if you could help me by restating that?

Q. Okay. What conclusions did you research in comparing these variables among the institutions of higher learning over the last 30 years?

[367] A. Well, I have extensive tables that break that down but collectively, in terms of the major comparisons, the three TBI and five TWI, the state expended considerable amounts of money. I think collectively the replacement value went from almost a quarter of a billion to almost a billion, and a significant amount of space was added to the campuses collectively. In my opinion, it did not alter the character of the traditional black institutions.

MR. RAY: Your Honor, may we have a continuing objection to the character of the institutions as he has defined it before?

THE COURT: You may.

THE WITNESS: Shall I continue?

MS. PETTENATI: Did you finish?

A. The comparison of the TBI's and Jackson State compared to Mississippi State uNiversity, Ole Miss and the University of Southern Mississippi was that again space was built at Jackson State and expenditures were made. I, in my opinion, I don't believe they were adequate to achieve the goals of becoming a research university. That the facilities can be characterized as undergraduate institution, much as it was when I initiated the starting point of the study 30 years ago in the—

MR. RAY: Your Honor, we object. There's no allegation there is a duty for the State to make Jackson State [368] a research one institution. It's therefore irrelevant.

THE COURT: Overruled.

THE WITNESS:

A. The other two remaining comparisons were in the Cleveland area and the land grants. In the Cleveland area, again, monies were spent, space was added, the facilities at both institutions support undergraduate education. I felt there was a—it was a distinct difference, since they had similar evolutions of programs, that the equipment and the sophistication of space, the support space at Delta State in my opinion created a difference. In fact, I thought they were not equal.

At the land grants, in the comparison there became one solely of the designation of land grant. At the beginning of the study period, the ratios were somewhere in terms of space and plant value about Alcorn was about one-fifth that of Mississippi State. Thirty years later they remained about one-fifth. The allocation of funds in addition to space were in about that ratio. So there I felt that I could not explain the fact that both were designated land grant, that there was the disproportion of land grant supporting

facilities, not only the kind, but the sophistication that Mississippi State compared to Alcorn, so I felt that there appeared to be lack of equality between the treating of the two land grant institutions.

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[388] Something to note about gross space to start with, the next table will be net assignable square feet.

Gross square feet is usually about fifty percent more than net assignable. A very, very subtle analysis can be made.

For example, if a campus of—has a very close ratio of net assignable to gross square feet, that doesn't mean that it has thinner walls.

What is means is that the plan has been more genorous.

Where there is more gross to net. That is the standard term, gross to net ratio.

If you were to find that the net amount of space was close to the gross amount of space, people were very efficient. They did not add very wide corridors or lounges or spaces that were sort of superfluous, but they were generous. They accomodated different kinds of things.

I elaborate on this almost as a preliminary to the next table. One other fact of analysis of this table is certainly one would have to understand inflation, double diget [389] inflation, because in the early years one would find an amount of space could be delivered at a relatively low cost.

I find numbers of fifteen to twenty dollars a square foot in Mississippi difficult for me to relate to the northeast, but collaborated from the standard building indexes.

That would mean if you had a million dollars and it cost you twenty dollars a square foot, you could build a fifty thousand square foot building in 1960.

A million dollars in 1985 and you had to spend a hundred dollars a square foot, you can only build a ten thousand square foot building.

So if the State's allocation of resources were frontend loaded, that is, money was spent in the early years extensively on a campus, it would get a lot of space for the dollars.

If it received the space at the end of the period, it would not get comparatively as much space as the campuses got in early years.

So, if the State provided two million square feet at Jackson—I am sorry, at Southern Mississippi and Ole Miss and Mississippi State, 1960, 1961, or '64, '65, compared to Jackson State at half a million square feet, a lot more space was built at those TWI's research universities.

On the other hand, Jackson State having such a large [390] amount delivered in the more recent years, the past ten years, would mean that it was receiving relatively less square feet for the early amount of—compared to the earlier amount of building at the TWI's

It is kind of a convoluted discussion. I hope it came through clearly.

Anyway, that is what I derived from the table.

Q. I would like to direct your attention now to table number seven, which is Government's Exhibit Number 836(f).

Please identify that chart and explain how you prepared it?

A. That is table seven, titled Campus Space, Net Assignable Square Feet.

You will notice that this now is only a fifteen year period compared to the previous table that was a twenty-five year period.

It looks from 1969, 1970 to 1984, 1985 with percentage increases for all eight campuses.

This was frustrating simply because the information was not available on net assignable square feet for any data before 1970 that I could locate.

So, with some apologies to the difference between the twenty-five year and the fifteen year period, this is where I show the interesting relationship between the amount of net square feet to gross square feet, and where the delivery [391] in space with respect to inflation occurs.

The analysis that I did from this showed that the amount of space at the traditionally white institutions.

What that would be—what that would suggest is that the buildings were planned much more efficiently, but one finds lack of amenities when it comes to the width of a corridor or an additional lounge or whether it comes to what is not included as useable space but certainly has benefits.

You can find it when you walk into a dormitory, you can find it when you walk into a student center or even a classroom building.

That is a generalization because of the five hundred buildings on the eight campuses, but looking at the net space as a ratio to the gross space, that is a fairly consistent indicator that space was built, but at the TBI's you would say not as generous or with as much ambiance as the traditionally white institutions.

Q. Did you reach any other conclusions based on your comparison of the subcategories in table seven?

A. Well, we find at—for example, the research university categories at Jackson State compared to the other three institutions, as I suggested, the increase at Jackson State would look higher than at the three research universities except for Mississippi State.

That is when you start to see it have a puzzling [392] relationship. If so much more gross square feet was added at the traditionally white universities, why is there more net at Jackson State, and then you start to look at the buildings, walk through them, see what was provided, and you find this kind of ambience or generosity or efficiency, as I described.

The same thing occurred in a sense at Mississippi Valley State and at Delta State.

Overall, Mississippi Valley State added more square feet in the twenty-five year period than Delta State, so it would show that the net would be higher. But not—the net would be higher at Mississippi Valley than Delta State, but not to the proportion that one would expect looking at how much more gross square feet there was at Mississippi Valley than Delta State.

Out of both of these tables, again, in terms of subcomparisons, one would have to understand that the amount of space has a different cost to it, based upon the building type and the sophistication.

That led me to take a look at the later—on at the plant investment, because those factors of gross to net ratio and the type of space where a laboratory now can cost a hundred dollars a square foot, but a classroom maybe sixty dollars a square foot, so that a major addition of space on a campus has to be looked at for the building type to

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[402] Now, if you then look finally at the columns on the left, five hundred, six hundred and seven hundred, special generating and support. If you look at Jackson compared to the other three, you sort of have to chase around the numbers.

Jackson State doesn't have nearly the amounts of those kinds of spaces as the three research. I think this has a lot to do with the abilities not only to attract and retain students, faculty, but it is a representation of the character of the institution.

If you look at the Cleveland area schools, Delta State and Mississippi Valley, here you would expect somewhat remoteness of the schools to need a lot of those kind of support facilities. Now, student unions and laundries and

so on. I was kind of surprised that Delta State had quite a bit more when you added up those three categories.

On the one hand, Mississippi Valley State had more classroom but less of the supported kinds of space. I think there might have been some inequities in that.

* * * * *

[410] Then, the bottom half of that chart pulls out the research universities on a net assignable basis, and there you find that up until the most recent year, Jackson State lagged behind consistently in comparison to the traditionally white universities.

We find—that puzzling comparison, Jackson State has [411] less gross square feet in the recent year compared to Southern Mississippi, but when it comes to the net, Jackson State does pretty well. That is the ratio is reversed you suspect them to be the running parallel if all of the buildings are the same and the gross ratio and they were designed in the same frame of reference, but this would suggest to me and I tend to have this confirmed on the campus visits that the spaces were different. They may have been the same thing, teaching, laboratories, offices, but a little small, a little less general none useable space at the traditionally black institutions compared to the traditionally white institutions.

* * * * *

[412] A. Yes. These are all I am taking advantage of, parading then all in front of me at the same time.

They all deal with monies spent on facilities, which include buildings, grounds, utilities and investment.

The purest term of plant investment is the precise number of dollars spent and accumulated on an audited or accounting statement basis, annually or bi-annually.

So, these six tables start off with table twelve, plant investment book value, table—

Q. Please define book value, Dr. Kaiser?

A. I am not an accountant, but my understanding of the term is this that – The book value represents the – An exact amount of the dollars expended to obtain a good or service in a specific time period.

The accounting statement has a time period added to it.

* * * * *

A. Just move aheard to the titles of the other tables. Table thirteen is plant investment, replacement value.

[413] A. That overcomes the disadvantage of looking at book value in a precise period of time, because you now are inflating and bringing constant dollars to current dollars.

In other words, you go back to an earlier period of time, develop a factor to multiply the effected inflation and each of these entries took the data from essentially – from the previous table and inflated it so that these are all now current dollars displayed in table thirteen.

I did that by taking the Stae Building Commission data and IHL data, what would have been book value IHL for several tables and used a replacement value as a multiplier.

For example, in 1926, 1927 – I am sorry, 1969, 1970, the replacement value is twenty-six dollars a square foot, jumped to thirty-five dollars a square foot the next period.

Then, the State Building Commission reports did have replacement values for the buildings.

I have to point out some problem with that, because I would – again with that, the replacement value of campus might differ from my calculated value.

In other words, I did not understand in some cases how the replacement value was calculated, but I took the data either from the interrogatory, if it was available. Where it was not, I calculated using a consistent fashion. That was table thirteen.

Table fourteen, I then went ahead and divided the FTE's[414] into book value for the eight institutions for a twenty year period.

On table fifteen, I divided the FTE's in the replacement value for a twenty-year period, and then on table sixteen I pulled out of the earlier tables just the research universities value per FTE book value and replacement value just for clarity of camparison.

Now, one thing to point out. The book values were available for a twenty year period to get FTE's. I could not get book value for the same-period. It somewhat bothered me – On, I am sorry. It was replaced.

Would you please scratch all of that.

There was a difference in the period that – I am sorry.

What I wanted to point out was that these tables are for a twenty-period where earlier I used twenty-five and thirty-year periods. That was because I could not find either consistent uniform data or at least data I would feel comfortable using, so I only used a twenty-year period in these tables.

Q. What conclusions did you reach based on the information in tables twelve through sisteen?

A. Well, it was first of all quite evident that the State had responded to the enrollment growth and the academic program requirements with a significant investment.

If you look at book value, the dollars added each year, this is important to break it down in five-year periods, [415] because you can at least benchmark what happened at the end of those five years.

It sort of collapses inflation and other factors. You look at the actual dollars spent. The period from 1969 – 1964, 1965 to 1969, 1970, there was a significant increase at each of the campuses, both TBI and TWI.

Actual dollar values, for example, increased, book value increased two hundred and fifty-nine million dollars in a twenty-year period.

What I considered to be more meaningful in the overall about the State's response to higher education was that added in a twenty-year period replacement value of almost seven hundred million dollars.

That is a—really an acknowledgment of the State's response. Then, it starts to break down differently, if you look at the subcomparison, the TWI's to the TBI's, and then by the group of institutions

If you look at table thirteen, replacement value, you will start to see some—some suggestion of what I talked about, a frontend loading of building a lot, when you get a lot more building for the dollars.

You will find that one could say in the last ten years that TBI's did have a lot of replacement value added.

On the other hand, if you look back on the earlier years, you find a lot more replacement value had been added at the [416] TWI's. That would suggest that early on in the growth of higher education, more building was done at the TWI's.

This would be true, I think, in each of the subcomparisons. They fell uniformly. You have literally got a lot more building.

Later on, we find—again, this is just an increase over twenty years. It does not address itself to where they were at the beginning back in 1953, 1954, just because I could not find the data consistently available to show increases, but I do have total replacement values and total additions to plant for this twenty-year period.

Again, the State responded and it responded, I think, to all campuses. However, it did not respond in a uniform manner at the early period when we got—when you got more construction for your dollars.

In more recent years, when there has been a significant expenditure made at the TBI's, it is buying less building than those dollars would have bought, ten, fifteen, twenty, twenty-five years ago, and it does not reflect the replacement values or book values prior to 1964, 1965.

I summarize that later on in a summary table.

Q. Okay.

A. Then, that is generally what the replacement value table shows. You can take a look at the—each of the detailed tables on a per FTE basis, but if you go all the way back to table sixteen, which is entitled Plant Investment, research [417] universities is one of the subcomparisons I made.

Look at replalcement value at—well—sorry.

Take a look at book value on table sixteen in this twenty-year period, just what happened in this twenty-year period. 1964, 1965, then, that year, when a dollar was worth four times what it is today, I think.

You bought thirty-two hundred dollars worth of construction per FTE at Jackson State. You bought about the same at Southern Mississippi. At Ole Miss, you bought almost six thousand dollars worth. Mississippi State was sixty-two hundred dollars. That—remember this is by FTE, so that trend moves across, and you start to see Jackson State.

Remember again the per FTE and how it divides into the actual dollars.

Indeed, by 1984, 1985, more—almost twice as much was being spent, two-thirds more at University of Southern Mississippi, but less by forty percent at Ole Miss and a half by Mississippi State.

Replacement value, you move across when a dollar was buying only—today dollars were buying a lot more then.

Jackson State was less than any of the TWI's. That moves across fairly consistently until you get to just last year, where it exceeded University of Southern Mississippi but is less than half of the other traditionally white universities, so from that I–

[418] Looking over a time span, one sees in all of these tables on plant investment, dollars actually expended. The state made a significant amount of investment.

Undeniably, it spent a good deal of money, not only at the traditionally white institutions but at the traditionally black institutions, but a large portion of those monies were spent in the early years where more construction could be obtained.

Secondly, where the funds were added in later years, one has to look more closely at the building types and the amount of space obtained.

When building expensive laboratories at Mississippi State or at University of Southern Mississippi, you don't get as much square footage, but you do get support for academic programs, whereas Jackson State's space in classrooms would cost much less per square foot, and you get more per square foot building, and it shows a different response to academic programs.

I think it shows some differences between the treatment of the institutions

Q. Dr. Kaiser, do you have any other conclusiosn based on your analysis of tables twelve through sixteen?

A. I don't think I drew attention specifically to the comparisons between the Cleveland area schools or the land grants, but I feel that the comments I have made generally apply, [419] and there are some specifics.

I can add, for example, between Delta State and Mississippi Valley State about the frontend loading of the building, that is, the earlier construction. The same thing is compared to Mississippi Valley State.

Again, the different kinds of space, space–space built to support graduate and research programs are different. They cost more than space built for undergraduate programs, so if you are building for graduate programs at Delta State, you are bulding more expensive space, getting less space per the dollar than you would at Mississippi Valley State.

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[420] Q. Is there a relationship between plant investment and equipment and a campus' ability to attract and retain students and faculties?

A. In my opinion, definitely yes.

Q. Would you elaborate?

A. Well, without fearing some repetition, the kinds of equipment to the visitor, to the prospective student, prospective faculty member, an identification of the kinds of programs.

For example, this might help some. If one goes to Mississippi Valley State, that is clearly an undergraduate institution. It is clear that it has assumed a role in industrial arts training.

If you then shift quickly to Delta State, you don't see the sophistication of the equipment, laboratory equipment, computing equipment, so that the attraction, rentention discussion begins to raise a question of what you came to look for and what you find.

So, the equipment will show clearly the nature of the institution, and it could provide what you are looking for.

If you go to Jackson State and look at a laboratory, even as a social scientist, computing equipment, compared to the traditional white institutions you would notice a [421] substantial difference, so the equipment enables an institution to support its academic programs, and you respond as you would as a prospective student or faculty member.

Q. I would like to direct your attention to tables seventeen and eighteen, Government's Exhibit 836(q) and (r).

Please identify those tables and explain how you prepared them?

A. Table seventeen is titled Plant Investment, Equipment per FTE.

It is important to note the period, 1964, 1965 to 1979, 1980, only fifteen years.

Table eighteen is Plant Investment, Equipment per FTE for research universities. That is pulled out of the previous tabel just to display the research universities.

Q. What conclusions did you reach based on the information in those tables?

A. The conclusions I reached by inspection are on the larger scale of comparing TBI's to TWI's and so on.

Again, the State spent, as reported in the annual reports—by the way, in terms of preparing this, I was flustered not being able to have available reports when I was preparing this past 1980, so with some apologies it only covers that central fifteen-year period. I wish more information was available, but I wanted to examine it, so I used what I could find.

[422] It shows the State spent an increase over the twenty—over the fifteen-year period of seventy-one million dollars.

It increased. The equipment at the eight institutions went up to nine million. It jumps significantly from year to year.

If you will look at the comparisons of now the TBI's to the TWI's, you also look at the notion of frontend loading and backend loading, and when it occurred and where it occurred.

You see that the TBI's in aggregate of eight point four million compared to sixty-three million. That is sort of

disproportionate with the replacement value of the three TBI's to the five TWI's.

It suggests that the—there was less equipment provided, the buildings are less sophisticated, the programs certainly would not be at the graduate level that they are at the TWI's.

In the individual cases, if you look at Alcorn—I am sorry if you look at Jackson State—

I would like to pull this out in the later table, so we will jsut set it aside there. We will set aside table eighteen for the moment—rather look at table eighteen.

You can see Jackson State increased two point seven million dollars in its equipment in the fifteen-year period—that central fiften-year period. That is a lot less than what occurred at the University of Southern Mississippi, which was over sixteen million. Ole Miss was at sixteen million, [423] and Mississippi State at twenty-three million.

We will look at per FTE basis, early on, 1964, 1965, Jackson State received three hundred and ninety-five dollars per FTE, twenty percent less than Southern Mississippi, and not even half of Ole Miss or Mississippi State.

Those ratios continue to divulge, coming out at least in 1979 and 1980. There you find that the amount in that—at that point in time per FTE—again, that was this benchmark year that Dover used. It comes pretty close to peak for all of the institutions.

There was four times the amount of equipment expenditures at the traditional white research universities compared to Jackson State.

So from that, I draw the conclusion that there really has not been very much of a response to enable the conduct of graduate programs or enhance the ability to expand them,

and even at the undergraduate level, I would question the competent complexity of the programs and the comparability, then, of the four institutions based upon the State's response in allocating resources for equipment.

For the Cleveland area schools, Mississippi Valley and Delta State, you see a significant difference in the equipment. I use that illustration to introduce the tables.

At Mississippi Valley State compared to Delta State on a per FTE basis, even as recently as 1979, 1980, when the [424] enrollments were fairly consistent, we find more than twice as much expended on equipment, and that was verified on visits and tours through the campus buildings.

At Alcorn and Mississippi State University, the two land grants, one looks at the starting year for Alcorn of nine hundred thousand dollars in equipment and Mississippi State has six million dollars of equipment.

About 1979, 1980, Alcorn has four million dollars in equipment and Mississippi State has six million dollars of equipment.

The increase at Alcorn for that fifteen year period was three and a half compared to Mississippi State's twenty-three million dollars of equipment.

So, that one would regard Alcorn as an undergraduate institution, based upon that, with limited graduate opportunities, and I question its ability to support the land grant function compared to Mississippi State. It certainly was well equipped to handle graduate and land grant functions.

Q. In your opinion, Dr. Kaiser, did the plant investment in equipment at the three traditionally black institutions effect their ability to attract and retain students and faculty?

A. My answer to that would be yes, because if one were viewing or reviewing a graduate university, particularly, or even undergraduate, you would consider it.

[425] I said this earlier. The equipment and whether it was able to provide the materials that you needed to conduct your undergraduate or graduate programs.

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[429] Q. What kind of spaces might that indicate that were built at Delta State?

A. Oh, from my inspection, I could see the—well, a couple of things. One, at Valley State, the buildings are new and, therefore, some expensive renovations and modernizations were not done—were not required as they were at Delta, so you [430] did see some of those kinds of money spent.

Secondly, you really did see more sophisticated space, higher quality construction space at Delta State than at Mississippi Valley State.

That is my opinion after walking through the buildings. I did not look meticulously at work drawings; I did not see contractors' bills, but the opinion of materials that I did see and the methods of construction was that Delta State had better quality of construction than Mississippi Valley did. That is borne out somewhat by the repairs and renovations request that are now in the pipeline.

Q. I would like to direct your attention now to Appendix A of your report, which is Government's Exhibit Number 836(t).

Could you please identify that appendix and explain how you compared it?

A. Yes. Appendix A is titled, Summary—Eight Campuses 1953/54 to 1984/85. It does place across the top the eight campuses and eight campus totals, and then vertically it shows each five-year increment from 1953, 1954 with some or all of the information on fulltime equivalents, gross square feet, net assignable square feet, investment in book value and investment in replacement value.

This was developed from the Defendant-provided material, primarily State Building Commission and the IHL bi-annual reports. This is the—this is the master key of—with [431] the help of the loaded spread sheet, you can do one big supper table, and from this I pulled all of the other tables, so this brings together in a single display all of the material that has essentially been shown in all of the earlier tables except for equipment.

Q. What conclusions did you reach based on your analysis of this table?

A. Over a thirty-year period, the State of Mississippi allocated resources for higher education. It responded to the enrollment in growth, it provided money to build buildings, but in my opinion, the needs that existed at the beginning of that period required a level of compensation which has represented by these thirty years of what I would have to say would be generally equitable treatment was not adequate by the State with respect to facilities to change the character of the eight campuses as they existed thirty years ago.

MR. RAY: Objection, Your Honor. It is irrelevant whether the character was changed at the institutions.

THE COURT: Overruled.

MS. PETTENATI:

Q. What conclusions did you reach with specific reference to the traditionally black institutions?

A. That the traditionally black institutions increased significantly in enrollment. There was a significant investment by the State, but that the—in the subcomparisons at Jackson [432] State, we now find thirty years later facilities and equipment adequate for graduate universities with the ability to support very limited graduate offerings.

Q. Excuse me, Dr. Kaiser, I believe you said facilities adequate for a graduate institution—is that—

A. Would you read that back?

THE COURT: Read that back, please.

COURT REPORTER: "That the traditionally black institutions increased significantly in enrollment. There was a significant investment by the State, but that the—in the subcomparisons at Jackson State, we now find thirty years later facilities and equipment adequate for graduate universities with the ability to support very limited graduate offerings."

THE WITNESS: That should be adequate.

MS. PETTENATI:

Q. Okay. Please continue.

A. Okay. Furthermore, at—at Jackson State in respect to the large investment made, the very limited land holdings inhabited the opportunities to expand academic programs and support graduate offerings.

The—finally, the limitations of housing at Jackson State, I believe, have inhibiting influence on the ability to attract students, other-race students, particularly, and develop and expand the graduate programs.

[433] There was no—certainly, it inhibits Jackson State from competing effectively with the three traditionally white universities to be equipped the way it is, have the kinds of spaces that it does and the limitations to housing.

Just to continue with the other comparisons and conclusion.

At Mississippi Valley State and Delta State in the Cleveland area, I found that with the recent divulgence in the enrollment, now fifty percent greater enrollment at Delta State than Valley State, there is a surplus of space at Mississippi Valley State.

On the other hand, its ability to support other than a very limited undergraduate program is very clear. It was neither equipped nor the space was built to effectively compete with Delta State for either undergraduate or the limited graduate offerings in the program that Delta State can now effectively conduct.

Finally, at Alcorn and Mississippi State, we find two institutions designated to be land grant, but that as it was thirty years ago, Alcorn remains an undergraduate institution.

There have been limited opportunities to compete for land grant oriented programs, faculty or students, because of the—facilities and investments made at Mississippi State University in the past thirty years.

In my opinion, Alcorn has not reached parity in programs and types of facilities that Mississippi State University has.

[438] * * * * *

Q. Dr. Kaiser, did you reach any other conclusions based on your study of the allocation for facilities at the institutions for higher learning over the last thirty years in Mississippi?

A. I would be excessively repetitive if I restated what I did in its entirety, but, again, it is clearly that the State spent money, buildings were built, space was added, but that, in my opinion, it was not adequate to change the character of the traditionally black institutions and that [439] compensation necessary was not made available with respect to facilities by the State.

[455] * * * * *

Q. In fact, it's pretty obvious to you, isn't it, that looking at the combined percentages, the predominantly black institutions had substantially a higher percent increase in gross space added, didn't they?

A. Yes, they did.

Q. Because if you look at the white institutions in that period of time, the increase was less than double, less than a hundred percent. In fact, about sixty percent. But if you look at the predominantly black institutions, they increased over a hundred percent in gross square feet, didn't they?

A. Yes, sir.

Q. And then let's look at the next period. Again, you had an increase at the predominantly black institutions of around [456] fifty percent, didn't you, when you combine them?

A. Uh-huh.

Q. So from 65 to 70, with a fifty percent increase in the predominantly black institutions of gross square feet, you had a much smaller increase at the predominantly white institutions, didn't you?

A. Yes.

Q. About fifteen percent versus forty-six at the black institutions. Does that look pretty accurate to you?

A. Yes.

Q. And then the next five-year period, again, about a one-fourth increase. Twenty-eight to thirty percent at the predominantly black institutions.

A. Uh-huh.

Q. Do you doubt that figure?

A. No, I won't argue.

Q. And at the predominantly white institutions for the 70 to 75 period, a 7.4 percent increase in space compared to that 28 percent. Is that right?

A. Uh-huh. Yes.

* * * * *

[457] Q. And finally for your last five-year period, the predominantly black institutions increased 7.4 percent and the predonimantly white institutions increased 2.8 percent in space. Does that figure look about right to you?

A. Uh-huh.

Q. So in each one of these five-year periods of time you've looked at, if you compare a percent increase, which is a method that you used looking at the institutions themselves—

A. Uh-huh.

Q. —in all but one of those periods of time the black institutions had a higher percent increase than the white institutions, isn't that correct?

A. Yes.

Q. And then if you look, Dr. Kaiser, at the cumulative effect over the entire period of time, which you have said is the way you need to do this kind of study to make up for rapid fluctuations, I believe, isn't it true Alcorn State University, looking from 60-61 with 244, 991, had an increase of almost a million square feet, an increase of about four times, wasn't it? A 404 percent increase in space at Alcorn?

[458] A. Uh-huh.

Q. And if you go right down the list, Jackson State was over 400 percent increase, wasn't it?

A. Yes.

Q. And Mississippi Valley State was over 300 percent increase?

A. Yes.

Q. And if you look at the totals of the black institutions and the space increase using your figures from 1960-61 to 84-85, the black institutions, cumulatively, had a 381 percent increase in space. Almost 400 percent compared to the white institutions with about 150 percent?

A. Uh-huh.

Q. So you had more than twice the percent increase with the predoniminantly black institutions over the period fo time you looked at. Is that true?

A. Uh-huh.

Q. And it's also true that the highest percent at any of the predominantly white institutions was less than 200 percent, isn't that right?

A. Uh-huh.

Q. So you have the high of 200 percent at the white insititutions versus the low of 328 percent at the predoniminantly black institutions?

A. [Nods yes.]

* * * * *

[459] Q. Dr. Kaiser, you stated that Jackson State doubled, and then had another fifty percent increase in that time, didn't you?

A. Yes, I did.

Q. And you also stated that the predominantly black institutions got about three-eighths of the gross square feet over the period of time you looked at. Isn't that right?

A. Yes.

Q. Now they didn't have three-eighths of FTE enrollment from looking at your enrollment table, did they?

A. No.

Q. Had less than that, didn't they?

A. That's correct.

Q. So, in fact, they not only got a proportionate share from an institution to institituion basis, they had more than a proportionate share of their gross square feet added when [460] you look at FTE, didn't they?

A. On that basis, yes.

* * * * *

[461] Q. So from Table 6 and 7, Dr. Kaiser, the ones—well, from 7 we just looked at, and from 6-2, you can really ascertain a pattern for twenty-five years the predominantly black institutions have consistently had a higher percent increase in space by your two indicators, gross and net, than the white institutions. Isn't that right.

A. Yes, that's right.

* * * * *

[472] Q. There's not a pattern based only on the race of the institution in this analysis, is there, Dr. Kaiser? You got one at, one below, and one above. Isn't that right?

A. Well—

Q. Is it wrong?

A. It's interesting when you say a pattern, because that's when one begins to apply a level of analysis. It's the same question about looking at two prices on automobiles. Are you getting the same kind of automobile or are the prices appropriate? I would then peel off another layer on these offerings and say, well, among the universities, Jackson State is significantly below the other three universities. Alcorn is quite a bit lower than Mississippi State. Mississippi Valley is higher than Delta, but the trace—it's the same kind of anomaly that occurs when you take averages and find that twenty things happen statistically. So indeed you're right. The chart is what I'd call color blind. However, when you do apply some level of analysis to it and look for patterns that you've done in all the wide array and point out what the meaningful things that I see in them are.

* * * * *

[482] Q. Let's look at 836(k), your Table 11, Dr. Kaiser. Now this is one of your tables where you decided to group four of the institutions and omit four others. Is that correct?

A. Yes. These are what I define as research universities [483] grouped together.

Q. And on this table you brought forward data that you had and came up with net assignable square feet per FTE student. Is that correct?

* * * * *

Q. And you only looked at Jackson State, Mississippi State, University of Southern Mississippi and University of Mississippi.

A. Yes.

Q. And throughout the course of your analysis before, a comparison of those four institutions had always put Jackson State University at the bottom of this ranking. Isn't that correct?

A. Yes, it is.

Q. Until you get to 1984-85.

A. Yes.

Q. And it's not at the bottom anymore, is it?

A. No, it's not?

Q. Now the University of Southern Mississippi is at the bottom of this ranking, isn't it?

A. Yes, it is.

* * * * *

[491] Q. Let me hand you a copy. This has been marked as Board 344. That was presented to the Department of Justice as an exhibit, Dr. Kaiser. Have you not seen that document?

A. Yes, I have seen it and I really was trying to find out the source and the division of dollars, the various federal/state and local funds that could have gone into it; and I was unsuccessful in being able to get the back-up for that, the fundings streams to explain it, so while I don't dispute it, it's also because I can't.

* * * * *

[493] Q. Well, in fact, Dr. Kaiser, let's look at the most recent period we know about, since 1981.

A. Yes.

Q. The period we talked about in your deposition. Since 1981, all addition to plant has been proportionately distributed with respect to the predominant race of the institutions, hasn't it?

A. Are you quoting me?

Q. Yes, sir, I am.

A. I think it's consistent. Yes, without reading it. And I'm not sure about the legal aspect of a deposition being quoted, but I think I have said consistently that there has been equitable treatment in recent years.

Q. Yes, sir. And furthermore, broadly speaking, it's clear, isn't it, that facility resources in the past thirty years have been equitably allocated from the viewpoint of racial characteristics of the institution? Again, quoting you.

* * * * *

[494] THE WITNESS: Could you read that back, please?

THE COURT: Do you want to restate your question? Restate your question.

* * * * *

Q. Yes, sir. Let me just ask you if you agree or disagree with this statement. Broadly speaking, it's clear that facility resources in the past thirty years in Mississ`ppi have been allocated equitably from the viewpoint of racial characteristics in the institution.

A. Yes.

* * * * *

[496] Q. Are you saying that a student's race determiens what makes an institution attractive to them?

A. Yes.

* * * * *

[498] Q. How does the greater percent increase in gross square feet and net assignable square feet at the traditionally black [499] institutions form 1961 to 1980 affect your conclusion that the space added to the traditionally black schools have not changed their character?

* * * * *

A. The changes that occurred in those fifteen-year or twenty-five year periods did not change the character of the institutions, as they occurred at the beginning of this period in 1954 and as they are found today, despite the substantial investment of construction. And as the defense attorney presented, I don't deny that there were those kinds of investments, those kind of spaces were added, but they did not compensate for the position at the beginning of the period nor do they change the character over the thirty-year period.

* * * * *

TESTIMONY OF DR. LARRY LESLIE

[532] A. The measures that I used compared the revenues and expenditures per student in the predominantly black institutions versus the predominantly white institutions.

Each of those revenue—each of those two categories, revenues and expenditures, were further broken down into a number of revenue and expenditure categories respectfully.

So, in sum, I was looking at the revenue and expenditures per student, taking into account certain contextual or environmental factors that I think are important to examining the equity question.

Q. Dr. Leslie, would you identify, please, and define those contextual or environmental considerations?

A. There were three in number.

One is economy scale, which relates to the efficiency one gains as the size of an institution grows.

The second is enrollment trend, and enrollment trend simply has to do with whether enrollments are generally increasing or declining.

The third is what I refer to as the historical record of financing, and by that I mean to say that if one is looking at the equity question in any given year, one needs to be aware of the—the cumulative equities or inequities that

have occurred over a period of years in order to judge the equity at a given point in time.

Q. Have you completed your answer, Dr. Leslie?

[533] A. You were asking me to define and—could you read back the second—

Q. I asked you to identify and define the environmental and contextual matters that you took into consideration.

You indicated that there were three. As far as my count, you have only described two.

A. They were the economy scale, enrollment trend and historical funding patterns.

Q. What do you mean by "historical funding patterns"?

A. Well, by historical funding patterns, I mean that an institution at any point in time compared to another institution will be funded equitably in consideration of the historical record and whether or not that institution has been funded equitably. That is to say that equity is not a matter of simply the revenues and expenditures per student in a given year, but is represented by the total accumulsation of the inequities or equities that may exist over time.

If I may give an example to clarify. If we go, for example, to 1960, which was the basic year in which my analysis began, one finds that when you aggregate all of the financial data for the predominantly white institutions, aggregate the financial data for the predominantly black [534] institutions, the white institutions had available in terms of total education in general revenues about twice as much as did the predominantly black institutions.

That means that in 1960, that institution had considerably more resources to hire faculty, to compete in academic labor markets for better faculty, to establish curriculum, including graduate level programs—

* * * * *

THE WITNESS: My point is that finances are the vehicle by which we are able to hire faculty, to begin programs, to improve the quality of the programs, and it is these kinds of matters, quality with faculty, quality with curriculum, that give an institution its visibility, its prestige, its status.

It is the characteristics of the institutions that derive from the finances afforded to it that make the institutions attractive to students, to faculty, who are in the academic labor market.

I began with 1960. My point here is that many of those [535] same faculty would be in the institution today, some would have left, some would have retired.

As we go on in time, that institution is building a reputation, it is building its status and so forth.

College and universities are extremely difficult organizations to turn around, to change, and it is the accumulation of relative financial condition over time that causes an institution to be attractive, to attract good students, attract good faculty.

So, my point is that one must look at this track record over time and not at any single year.

* * * * *

[537] Q. In comparing institutions, what approach is commonly used in the field of higher education in finance to select the appropriate institutions for comparison?

A. Most commonly in comparing revenues and expenditures of [538] institutions, the convention is to group the institutions by: institutional mission and compare institutions of like mission. That would be a traditional kind of costing study.

Q. Did you follow that approach in this analysis?

A. No, I did not.

Q. Why did you not follow that approach?

A. This work I would characterize or define as primarily an examination of the question of equity, and the question of cost—cost becomes the vehicle for looking at the question of equity.

The—in my opinion, if one were to only categorize and only examine institutions categorized in the same classification on the basis of mission, one would have immediately several serious problems.

For example, the first thing one would do is to eliminate about eight percent of the students in the State, because about eighty percent of the students in the State are enrolled in either predominantly white or black institutions that do not have any counterpart in the State.

Probably a more important reason for forming the analysis that I have used is that if one is to compare only institutions of like mission, this is tantamount to saying that since the State of Mississippi decided to allocate a disproportionate amount of its resources to one group of institutions, enabling that institution to hire the faculty, [539] establish the programs, including the graduate level programs to attract the students, now because the State has done that, it is unfair somehow to compare those institutions to institutions that weren't given those resources.

MR. STEPHENSON: If the Court please, he has used the word disproportionate. That is a conclusion and speculation on the witness' part, without specification or educational basis.

In fact, he is also arguing a case as a lawyer, Your Honor, and he has gone beyond his area of expertise as one tendered in the area of higher education finance.

It is not his job to determine in the context of this case, under grounds of legal standing, how comparisons should be made or what they should be.

MR. MARSHALL: Do you wish me to—

THE COURT: Well, of course, the Court is not accepting this testimony as nay kind of a legal argument, but he will be allowed to give—and I understand that is what he is doing now—is giving the reasons for him making his comparisons across mission lines.

Of course, what weight to be given that is a matter for the Court to determine. The objection will be overruled.

* * * * *

[543] Q. In general, what do the results of your analysis with respect of faculty salaries, faculty rank and tenure indicate?

A. My results in general are that the faculty in the predominantly white institutions, vis-a-vis, the predominantly black institutions, are on an average paid more, they are more likely to hold higher academic ranks, they are more likely to be tenured, and they are more likely to hold the PhD or the highest degree in their field.

Q. Do your results—the results of your analysis show any impact on students or per student expenditure of the faculty findings?

A. Would you restate the question please.

Q. I asked if there is an impact by the faculty—your findings on faculty on per student expenditure?

A. I understand now. The importance of the faculty, of course, is that it is primarily the quality of the faculty that are employed that impacts upon the kind of students that are attracted to the institution.

If one pays lower salaries, one is going to be at—be able to attract a lower quality faculty. At higher salaries, they will attract higher quality faculty, and, in turn, the higher quality faculty you can manage, you expect [544] there to be a higher quality student, and more probably more students.

[546] What I have tried to give is a broad picture of the finances that impact directly and indirectly on students.

Certainly, I put the State effort as represented in that—the State and local appropriations category up high on the list, because it is clearly one of the most important ones in measuring direct State effort, but there are many categories looked at.

* * * * *

[548] The second one was the student health services. We put all student health services into the category of student services on the expenditure side for consistency purposes, and then finally the Pell grants, we also allocated them in a consistent way.

I might say that up through 1982, the Pell grants, under CUBA were to be classified in a category called ancillary—no, excuse me, agency funds.

Now, agency funds are not part of the current operating budget. They are not part of the analysis that we performed. That is, as I say, up through 1982. In cases we had to take the Pell grant funds out of these. These are the basic education opportunity grants, and we put them into the agency funds, if the institution had incorrectly put those funds into their current funds.

In 1982, CUBA changed the rule. CUBA said at that point, put the Pell grants into the current operating budget. Again, for consistency purposes.

Primarily, we continued to put the Pell grants into the—take them out of the current operating budget and put them into the agency funds. There are a couple of other reasons why we did that, but consistency was none of the more important reasons for doing that.

* * * * *

[552] Q. Again, with respect to total education in general income and your comparison of TBI's, traditionally black institutions, and TWI's, traditionally white

institutions, in the aggregate?

A. I seem to be missing chart 2(a). Here it is.

I would like to refer to chart 2, which is identified as Government Exhibit—United States Exhibit 694 (c), and chart 2(a), which is referred to as U.S. 694 (j), and finally to tables 2 (a) through 2 (n), Government's Exhibit—United States 693 (d).

I would like to break out a few reference points in referring to these charts.

In 1960, the total education in general income averaged eleven hundred—excuse me, thirteen hundred sixty-eight dollars per student at the predominantly white institutions, and six hundred ninety-nine dollars at the predominantly [553] black institutions, which is a ratio of one point nine six one two one or about ninety-six percent more per student at the predominantly white than at the predominantly black institutions.

In 1980, which was the first year of my original study, upon which I was deposed in 1981, in 1980 the gap had increased to eleven hundred ninety-three dollars per student, that is, fifty-five hundred forty-seven dollars versus forty-three hundred fifty-four dollars, but the ratio had struck to the one point seven two one or twenty-seven percent difference.

By 1986, the dollar gap had increased to two thousand, seven hundred and sixty-three dollars per student, and this now is [exclusive of the Pell grants.]

The more notable change, however, was that the percentage gap had grown again. The total revenues being about forty-five percent greater at the predominantly white institutions than the predominantly black institutions, which compares to the twenty-seven percent figure of the six years earlier.

* * * * *

[577] Dr. Leslie, did you analyze the financial patterns with respect to faculty salaries, faculty rank, tenure?

A. Yes, I did.

Q. What were your findings relative to those categories?

[578] A. The tables I will be referring to here are 694—I believe that is (v)—

It is labeled table 5-1, table 5-1 (a) and table 5-2 and 5-2 (a).

Table 5-1 shows that the overall average faculty salaries, that is, the average salary by rank weighted by the number of persons at each rank, at the three traditional white category one institutions were the highest of the eight universities in the State.

Jackson State, the overall average was next, and that the two traditionally black category three universities were the lowest.

This is based upon 1979 and 1980 data.

So, on the whole in that year, faculty at the traditionally black institutions were paid less.

Specifically, in 1979/80, Mississippi State University faculty was the highest paid at an average of twenty-one thousand, one hundred and fifty-three dollars, which was about thirty-six percent more than was earned by Mississippi Valley faculty, which were the lowest paid t an average of fifteen thousand, five hundred and forty-six dollars.

The simple average, that is, the unweighted average of the five traditionally white universities was about nineteen thousand, four hundred dollars compared to about sixteen thousand, five hundred dollars at the three predominantly [579] black universities, and that is a difference of about seventeen percent.

The most recent data that I have for 1986/87 show the same basic patterns. The three category one predominantly white institutions still had the highest average salaries,

and this is now in table 5-1(a)

The Jackson State average followed, although it was very near the same as Delta State and Mississippi University for Women, and, again; the category three predominantly black institutions were still the lowest paid.

Between 1979/80 and 1986/87, the average salary gaps had increased between the predominantly black and the predominantly white institutions.

The salary patterns by rank generally are consistent with the overall average. That is to say when you compare the full professors at the predominantly black institutions versus the full professors at the predominantly white and so on.

The clearest differences among the institutions are noted at the highest ranks. Full professors, for example, at the five predominantly white institutions earned thirteen point eight percent more than did the faculty at the three predominantly black universities in 1979/80, and twenty-three percent more in 1986/87.

The next variable that I looked at was the distribution [580] of faculty by rank.

In 1981/82, faculty in the traditionally white institutions were at higher ranks in much greater proportions than was the case at their counterpart black institutions.

By 1985/86, the percentage of full professors in each of the predominantly black institutions was still less than the comparable percentage in each of the predominantly white institutions, averaging—again, this is a simple average—averaging seventeen point four percent in the former and thirty-two point six percent in the latter.

Conversely, the average percentage of faculty who were at the lowest professorial range of assistant professor in 1981/82 was forty-two point three percent at the predominantly black institutions and only thirty-one point seven percent at the predominantly white institutions.

By 1985/86, the percentages were thirty-four point three and twenty-seven point four percent, respectively.

Of—the third variable that I looked at had to do with the highest rank held, and the differences of the highest degree held. Excuse me.

The highest degree held, in part at least, explains the differences in ranks held and the differences in salary. For example, in table 5-2 and 5-2 (a), we see that the faculty at predominantly white institutions have tended to be more likely to hold the doctorate than have the faculty [581] at the predominantly black institutions.

However, the percentage holding a doctorate at Jackson State at almost sixty-five percent is roughly on the par with the percentage at the predominantly white institutions, and this includes the category one institutions. And that reference is, again, table 5-2 (a).

Finally, in regard to tenure, on the whole, predominantly black institution faculty are markedly less tenured. Most recently, the lowest tenure rate is noted at Alcorn and the highest is at Mississippi State, and this is for the last year of my analysis.

Jackson State had roughly the same tenure rates as the other two category one universities, whereas among category three universities the tenure rate is conspicuously low, and at the Mississippi University for Women, it is conspicuously high.

Q. Dr. Leslie, did you compare the financial patterns between black and white students in Mississippi?

A. Yes, I did.

Q. With respect to that category, that analysis comparison and your sub-categories, what were your findings relative to the total E&G or education and general expenditures?

A. Let me just say, if I may, a word in background as to how this was done for clarification purposes.

What I was interested in doing here was comparing the [582] financing of the black versus the white students, regardless of where the students were enrolled.

This was done through weighing each institution's expenditure data by the institution's relative black versus white enrollments. This gives us an estimate of the funding by race.

Now, this approach, of course, assumes that black and white students are distributed across the programs of the institutions in an even way, that is to say that there is no bias resulting from greater enrollment of either black or white students in more or for that matter less expensive programs.

Of course, based upon our knowledge of how blacks distribute themselves across curricular nationally and based upon some limited data available to me in Mississippi, one would suspect strongly that the technique does bias the data by over-estimating financing of black students. This is because blacks tend relatively to over-enroll in the lower cost programs, such as in the social sciences, the humanities and education schools and to under enroll in more expensive fields, such as physical sciences, engineering and the professional schools.

So, the information that I am going to give you in response to you, Mr. Marshall, should be considered, I think, a conservative statement of the extent to which whites are more favorably treated, as the results will show, than blacks.

[583] There is one other item I want to mention on the other side of the—of the ledger, and that is because black students are more likely to receive student aid, assigning average student aid figures to white students biases those figures in an offsetting kind of way.

One last thing in regard to the background of this, and that is because up through 1968 there were essentially no

black students enrolled in predominantly white institutions and no white students enrolled in predominantly black institutions, the results don't vary from those results taht we have already discussed. It is only when you begin to see movement of black students into the white institutions and to a lesser degree white students into black institutions that the results that we have already looked at begin to differ.

So, regarding total education and general expenditures, I would refer the Court to a report labeled Hoover report, parenthesis, black versus white, Exhibit 694 (r).

As I have already noted, up through 1968 the results are essentially the same as those we have already looked at.

In 1968, the total N&G expenditures still favor white students over black students. The institutional gap that we looked at earlier was thirty dollars greater than the student gap. Specifically, eight hundred and seven dollars more being spent on the white students when you look at it on an institutional basis versus seven hundred and seventy-seven [584] dollars when you do this weighted system in this part of the analysis.

In 1980, per student total education general expenditure, the gap between white and black students was seven hundred and seventy-four dollars, whereas the institutional gap was eleven hundred and two dollars.

In 1986, the student gap was eighteen hundred forty dollars and the institutional gap was twenty-four hundred seventy-eight dollars.

* * * * *

[586] Q. Dr. Leslie, did you analyze the Mississippi higher education funding formula?

A. I did.

Q. And what were your findings relative to that analysis?

A. I did.

Q. And what were your findings relative to that analysis?

A. Well, the primary test that I employed in examining the formula by which Mississippi allocates its resources across the eight universities is the extent to which an equitable distribution of those resources results.

Now, since the information we have already looked at comes from the financial reports, the examination of the formula is a means of allocating the State's appropriation or a good part of it, and that—those figures are represented in the financial reports, which we have already looked at closely.

Now, I do have some general observations, however, about the formula. I shoudl say first of all that formulas are by their nature conservative documents. They are promoters of the status quo, and the reason is that they are driven by, that is, they are based upon historical funding patterns.

In other words, formulas distribute resources on the basis of how those resources were distributed in the past. [587] That is essentially how they work.

To give you an example of how a formula works, just taking one department, this is a common approach that is used in formulas. It may or may not fit the specific case of Mississippi, but formulas essentially all work in the same way.

The common approach for a Physics Department would be to, say, take the departmental budget for a given year, divide that budget by the number of student credit hours that are produced during the year by the department.

This then becomes the so-called cost per student credit hour in physics. That number, then, or that number in combination with other units of physics might be joined together such as physical sciences, becomes either direct or

indirectly the weight or element in the formula that when combined across all units of the university, when multiplied through by the number of student credit hours generated, becomes the institution's allocation from the formula.

Again, the point of this is that the amounts in the formula, the weights, the elements, the factors come from the historical distribution of resources in the past.

There may be differences from State to State. In fact, probably all states that have formulas, about half of the states do, they probably all differ but they work on that same common base.

It seems to me that it is important to note that the [588] formula is responsible for many of the recent and past inequalities that I have already talked about that exist—that have existed historically when we compare the predominantly black versus the predominantly white institutions.

The—these past inequities will not be eliminated by our formula that perpetuates the status quo, and it does not compensate in some way for the past inequitable treatment.

The quality of the faculty, the facilities, the curriculum, the students, the quality of the students today is the product of past as well as present formulas in previous financing budgets.

The Mississippi formula, by its very design cannot eliminate effects of past without major changes in its fundamental nature.

MR. STEPHENSON: Your Honor, I move to strike. He has not said a word other than he knows Mississsippi has a formula. He has not identified the components.

He stated in the example that he used that it may or may not fit Mississippi.

THE COURT: Overruled.

BY MR. MARSHALL:

Q. Dr. Leslie, taking into consideration the entire analysis of some of the comparisons that you have made in this task, what opinions have you formed relative to the financing patterns in the State of Mississippi in its institutions of [589] higher education?

A. My general conclusion would be that overall both white students and traditionally white universities are in a favorable financial position when compared with black students and traditionally black institutions.

Although the gap narrowed between 1955 or 1960 and 1980, thereafter the gaps expanded so that conservative estimates are that expenditures on black students in Mississippi lagged considerably behind spending on white students.

This is true overall for total education and general expenditures, for instruction, for categories impacting directly on students and those impacting indirectly on students.

The discrepancies in my judgment are understood and interpreted most clearly, however, when financing of traditionally black and traditionally white institutions are examined.

The results do not vary greatly from those of the students because students tend to be enrolled along racial lines into institutions, especially the white students.

Usually per student income and expenditure figures in the predominantly black institutions trail those in the predominantly white institutions and usually the differences are major.

Yet, these differences, as important as they are, understate the true financial disparities between these institutions. Historically, predominantly white institutions

[590] have been better financed, and these differences are cumulative. The historical funding inequities manifest themselves in essentially all institutional aspects. The faculty quality—

* * * * *

THE WITNESS: These financial inequities become important in examining the faculty that is recruited by institutions paying smaller salaries, by the quality of the programs that those fewer dollars are able to establish, by the fewer graduate level programs that those dollars permit, and then by a difference in the quality of the students, the number of students who will be attracted by faculty of a lower quality as determined by the financial resources.

Fewer resources also mean fewer opportunities for research, for graduate assistance and equipment, and such considerations are paramount to faculty as they take academic [591] employment.

Altogether, these factors mean a lower status, lower quality institution, and these conditions combine to attract less eminent and qualified faculty and students.

The seriousness of the discrepancies in Mississippi are appreciated most fully when one considers the cumulative effects of under-financing over time, and here additional insight is gained when total income and expenditures are considered too.

A discrepancy of a few dollars in spending per student may have little effect on a single year, but if this discrepancy continues year after year, sometimes less and sometimes more, the basic fabric of the institution being disparitly treated begins to vary more and more. That is what finances do. This is why universities are almost incapable of changing their prestige or status, real or perceived, except over long periods of time.

A university deveolps its character and its image over decades and longer. It is extremely rare for an institution to undergo major change in as little as a decade. Where this does happen, usually there is a massive influx of funds.

In the early years I examined in my study of the State of Mississippi funding of the eight Universities, the—Mississippi made the decision necessary—[592] He has not investigated what decisions were made on the educational bases on which a decision might have been made.

THE COURT: Read back that last response.

(Whereupon, the last answer was read.)

THE COURT: Well, I assume that he had to make some investigation of some decision, the decision as to what amount was to be allocated to what uniersity. I don't know what decision he is talking about there.

Go ahead and complete your answer.

THE WITNESS: My statement is a reflection of the allocation of the resources to the eight institutions from the State, and my point was that in its allocation decisions, the State made financial decisions that allowed three predominantly white institutions from the State, and my point was that in its allocation decisions, the State made financial decisions that allowed three predominatly white institutions to approach or reach true university status, but because its institutions were segregated at the time and perhaps because black enrollment—

MR. STEPHENSON: I object, Your Honor, he is speculating now. He is saying "perhaps" and he is getting ready to make statements concerning the duality of the system and—

THE COURT: Objection is sustained.

MR. STEPHENSON: He is trying to get in a legal conslusion that he is not qualified to express.

* * * * *

[593] THE WITNESS: The financial resources made available to the predominantly black institutions were not adequate to develop those institutions financially in the way of the predominantly white institutions were developed.

As a final summary statement, then, equity in funding between white and black students in the State, between traditionally white and black institutions does not in my judgment exist in Mississippi.

The funding equity improved until 1980. After that date, disparities again grew to [where there is an accumulated deficit due to long term financial disparities,] and these disparities are important to students. This may be true of financial resources—this must be true if financial resources—this must be true if financial resources make any difference whatsoever.

* * * * *

[604] Q. With respect to—again, to your grouping of the predominantly black institutions with or as opposed to predominantly white institutions includes the three doctoral granting institutions, sir, isn't it true that you are comparing institutions of different program and curriculum and doing different things from an educational standpoint?

A. Are you asking about part one in which I aggregate all of the institutions together?

Q. Yes.

A. That's correct.

Q. And that is also true when you compared Jackson State with the three research doctoral granting institutions in this state?

A. It would be less true. That's right.

Q. Now, sir, before you were retained by the Department of Justice in t;his litigation, you wrote about the problems in making cost comparisons between or among institutions of different missions, didn't you, sir?

A. I have written a number of times about cost comparision.

Q. And you wrote specifically about the problems of making [605] cost comparisions between or among institutions of differing mission, didn't you?

A. Not for the purposes of comparing—considering the questions in this case.

Q. But in the normative sense where you were just making an educational judgment, is that correct, sir?

A. In the normative sense for what purposes for which costing studies are done.

* * * * *

MR. STEPHENSON:

Q. Dr. Leslie, I have handed you a publication entitled "Financing and Budgeting Post-Secondary Education in the 1980's."

Would you turn to page 27 of that document, please, sir.

Are you with me?

A. I am.

Q. There is an article there entitled. "Instructional Cost of Research Universities One," is that correct?

A. The title, yes, sir.

Q. Yes, sir. Below that, isn't it true, sir, that your name, Larry L. Leslie appears as author?

A. It does.

Q. In the first sentence, you state, do you not, that the [606] purpose of this report is to compare instructional cost among eight Western research universities one?

A. And to discern reasons for their cost variations.

Q. Thank you. But you go on to state, do you not, Dr. Leslie, that the data reflect also, in line four, cost comparisons among the three Arizona universities?

A. It does.

Q. And with respect to the Arizona universities, are you referring, sir, there to the University of Arizona, Arizona State University and Northern Arizona University?

A. Yes.

Q. Turn with me, if you would, please, sir, to page 28, the next page of your article.

The first full paragraph under the section a designation aggregated cost of Arizona universities.

Now, isn't it true, sir, that you state there in the first sentence that the temptation is very great to compare it directly to per student cost at the three Arizona universities?

A. Correct.

Q. And then you go on to state, do you not, sir, that such comparisons, however, are precisely why costing has earned a bad reputation and the disfavor of many professional individuals in organizations?

A. Correct.

Q. And then you explain why it has a bad reputation or bad [607] reputation results, do you not, sir?

A. I do.

Q. And then your next statement you say, do you not, such comparisons are largely without merit?

A. That's correct.

Q. And then you elaborate further, do you not, Dr. Leslie?

A. I do.

Q. And in your statement you say, don't you, sir, these comparisons – you actually use the word – they compare the proverbial apples and oranges, for the three universities are not similar?

A. I do.

Q. And then you go on to say, do you not, sir, they are expected to do quite different things?

A. Correct.

* * * * *

Q. I will restate my question.

You continue, do you not, on this page, sir, addressing the issue of the apple and oranges comparisons?

[608] A. I put it in terms of diversity and distinctiveness.

Q. Yes. Let's read what you say about diversity, sir.

In the second paragraph, the first sentence. Is it true, sir, that you state, the unique character of America Higher Education is embodied in the concept of diversity?

A. Correct.

Q. You emphasize the word diversity, do you not?

A. Correct.

Q. As a matter of fact, you place it in italics?

A. Correct.

Q. Then you state, do you not, sir, diversity is the quality that differentiates among colleges and universities.

A. Correct.

Q. And then you state, it is a quality of distinctiveness.

Did I real that correctly, Dr. Leslie?

A. You did.

Q. And then you go on to say, do you not, sir, this quality, this is the quality of diversity, says that there is no better or best kind of collegiate institution.

Did I read that correctly?

A. You did.

Q. And then you said, did you not, there are only different kinds, always with different expenses?

A. Correct.

Q. And then you referenced, did you not, sir, the fact that [609] you only find community colleges, predominantly undergraduate institutions and research and doctoral granting universities within a system?

A. I do.

Q. And then in the third paragraph you return to the three Arizona universities, don't you sir?

A. Yes.

Q. And there you recognize that the three universities are distinctly different?

A. I do.

Q. And you recognize there, do you not, sir, that they are classified different?

A. I do.

Q. And then in the fourth paragraph, you state, do you not, the Carnegie and similar type classifications were designed to place collegiate institutions into comparable categories so that a number of comparisons could, in fact, be made?

Did I read tht correctly, sir?

* * * * *

A. Correct.

Q. And then you conclude the paragraph, do you not, Dr. Leslie, with this statement.

Comparisons of similar institutions would seem to be far [610] superior to contrasts of colleges and universities intended to do quite different things.

* * * * *

Q. No, sir, let's talk just a minute about the scope of the study that you did and how you compared the three

Arizona universities which were of distinct and different missions, doing quite different things.

Isn't it true, sir, that first that you compared the University of Arizona with eight Western universities of [611] similar classification?

A. I did.

Q. And then you compared Arizona State University to a different group of regional institutions of similar classification?

A. Not in the Western research university study, no. Arizona State was compared to the other members of the Carnegie classification, which it resides.

Q. And then you compared Northern Arizona to other universities in the Carnegie classification in which that institution resided?

A. And in all cases, as pointed out in the first sentence of the article, to discern reasons for cost variations. That was my purpose in that study. It was not a study of equity in financing in any shape or form.

* * * * *

[612] A. And in making this study, before you made the actual comparisons between the three Arizona universities, you computed an index, did you not, based upon comparisons to like institutions in similar classification?

A. The study included an index.

Is that your question?

Q. Yes, it does, does it not?

A. It does.

* * * * *

[614] Q. All right, Now, sir, you did not follow this approach when you did your Mississippi study, did you?

A. Absolutely not. It is inappropriate.

Q. You did not make any attempt to compare the doctoral granting institutions with institutions of like kind, did you?

A. There are no such like institutions in the State of Mississippi.

Q. Well, you made no attempt to make a regional comparison, which you found it important in your Arizona study, did you?

A. There are no black research universities in the region.

Q. There was not another research one university in Arizona, was there, Dr. Leslie?

A. There are only three institutions in the State, one major research university and one doctoral granting and one comprehensive.

Q. And they were not like by mission, were they, sir?

A. No, they were not.

[615] Q. Just like here in Mississippi, institutions of different mission?

A. Not just like here in Mississippi at all.

A. They are with respect to being a different mission, are they not, sir, without attempting to specify the exact scope and program offerings?

A. There are different missions in the State of Mississippi and different missions in Arizona.

Q. Well, you made no attempt to compare Jackson State University with a regional institution of like classification?

A. I did not.

* * * * *

THE WITNESS: To say I made no attempt would not be accurate.

In the 1981 report, you may recall, there were some [616] national norm data looked at to compare all the in-

stitutions in the State. I found—I found those—that analysis to be singularly not useful, and it is not in the 1986 report, but the major reason that I considered that revenues and expenditures in other states were not germane was this was a study of Mississippi.

Q. It is an institutional study, isn't it, sir?

A. I would say it is a study of higher education in the State of Mississippi.

Q. And you have attempted to determine under your definition, what is your term "equity," have you not, sir?

A. I have an operational definition of equity.

Q. Wouldn't it be important, sir, to know how institutions compared with other institutions of similar classification?

A. I could think of a—probably a hundred things that would add marginally to the analysis. In my judgment, it would cloud the issue.

There is already a substantial amount of information here to--to synthesize to reach conclusions from.

I think it would be counterproductive to go and muddy the water more.

* * * * *

*[617] Q. Dr. Leslie, when we broke for lunch, we were addressing your failure to make institutional comparisons with institutions of like classification on a regional basis.

That data was available, wasn't it, sir?

A. I have no idea.

* * * * *

[618] Q. Well, sir, would it change your opinion to know that as late as 1983/84, that the per student appropriations at the University of Mississippi, Mississippi State University and the University of Southern Mississippi, the three predominantly white institutions to which you

have referred, were more than fifteen percent below the regional average for like institutions?

A. No, it would not.

* * * * *

[621] Q. Well, Dr. Leslie, would it change your opinion to know that the per student appropriation for the four regional universities, which includes two predominantly black institutions were more than twenty-five percent above the regional average for like institutions as late as 1983/84?

A. It would not.

* * * * *

[622] Q. And yet, sir, assuming the regional comparisons to which I just referred, which were taken from United States Exhibit 767(a) are correct, these same three doctoral granting universities are the very ones that are under-funded when compared with institutions of like classification?

A. [Well, my response to your whole line would be if you can show me where the black Mississippi universities are, I would be happy to compare them.

You don't have them in Mississippi. Your whole line of reasoning, as I understand it, Counsel, is that because the State has given most of the bulk of its money to these institutions, now you don't want to compare that.

You say that is not fair.

Why is it fair, because we gave them all of this money. That does not make sense to me as a financial expert.

* * * * *

[632] Q. Yes, sir, it is. Your income figures do not take into account the substantial sums expended for new facilities or repair and renovation?

A. No.

* * * * *

[634] A. I believe, sir, you indicated that your inclusion of the appropriations for the Mississippi Agriculture and Forestry Experiment Station and the Mississippi Cooperative Extension Service and the Veterinary Medicine School at Mississippi State is subject to some disagreement?

A. What I said was that the CUBA, College University Business Administration, allows the institution the discretion as to whether to generate a separate financial report for such functions or incorporate it into the single one for the institution.

Q. And whether the sums are appropriated or utilized with respect to the experiment station and Extension Service is a material consideration, is it not, for purposes of your institutional comparisons?

A. It is one of the half dozen considerations, I would say. Probably not the major one by any means.

Q. I believe you stated on direct, Dr. Leslie, when you were reading from your prepared text, that gaps were narrowed or reversed if the units were included.

Did you not mean to say, sir, excluded?

A. Well, let me restate my conclusion in that regard.

When the special Mississippi State units are excluded, the gaps between the predominantly white and predominantly black institutions decline.

* * * * *

[640] Q. You have made some comments today, Dr. Leslie, concerning student comparisons that you hjve made as opposed to separate institutional funding.

Isn't it true, sir, under your approach and your study that some black students would be treated more favorably in your opinion than other black students?

A. Yes.

Q. And isn't it likewise true, Dr. Leslie, that some white students would be treated more favorably financially in your opinion than other white students?

A. The word "some" is almost always true.

Q. Well, sir, isn't it true in your opinion that the approximately three thousand black students at the three major doctoral granting institutions are treated more [641] favorably financially than the black students enrolled in the predominantly black institutions?

A. Under my analysis?

Q. Yes.

A. That would be my assumption, yes, sir.

Q. And is it not also true, sir, that the black students at the University of Mississippi and University of Southern Mississippi and Mississippi State University under your analysis would also be treated more favorably financially than the white students at Mississippi University for Women and Delta State University?

A. Under my analysis, I would assume that to be the case.

* * * * *

[644] Q. Now, sir, as I understand what you have done with respect to your analysis, your opinions are based upon data obtained from the financial reports, is that correct, sir?

A. The financial data primarily come from the financial reports, yes.

Q. And, isn't it true, sir, that the opinions which you have expressed are on a comparative basis?

A. Yes.

Q. My point is, sir, you are not attempting to address in your analysis, are you, sir, the ability of an institution from a funding standpont to fulfill its mission?

A. No, no.

Q. Nor, sir, are you analyzing or expressing any opinions with respect to whatever the institutional goals may be from an educational standpoint and the impact upon funding on those goals?

A. No. For the reasons that I have stated earlier, these missions and goals to a great extent are derived from the money made available to the institution.

So, to my knowledge, that becomes a moot point.

Q. Well, sir, you are not assessing the educational [645] justification, are you, for the Board of Trustees' allocation of money in this State, are you?

A. Assessing their motives, did you say?

Q. Motives or the educational justification.

A. Not that is not my function at all.

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[657] **TESTIMONY OF DR. RODNEY FOIL**

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[658] Q. Dr. Foil, by whom are you presently employed?

A. By Mississippi State University.

Q. And in what position are you employed?

A. I am the vice president for agriculture, forestry and veterinary medicine.

* * * * *

Q. Dr. Foil, what are the duties of your present position?

A. I am a vice president of the university with primary responsibility for providing leadership and direction to the agriculture, forestry and veterinary medicine units on the campus and around the State.

Those units include the Mississippi Cooperative Extension Service, the Mississippi Agriculture and Forestry Experiment Station, the Forest Products Utilization

Laboratory, and I share responsibility for three academic units with the professors whose academic units are at the College of Agriculture and Home Economics, the School of Forest Resources [659] and the College of Veterinary Medicine.

Q. Dr. Foil, is there a relationship between the Mississippi Agricultural Forestry Experiment Station and the academic units of Mississippi State University in its land grant activities?

A. Yes, sir, there is a relationship in that the research units report to the vice president, as do the academic units that have agriculture and forestry interests.

Q. Is the relationship the same between Mississippi Department of Coopoerative Extension and the academic units of Mississippi State University?

A. Essentially the same.

Q. Dr. Foil, what is a joint appointment?

A. A joint appointment, we use it at Mississippi State University as an appointment in which the salary or wage of an individual employee is shared by two or more budgetary units within the campus.

Q. Are there joint appointments involved in the areas that you are responsible?

A. Yes.

Q. And in what areas are those?

A. It is quite common for researchers, research scientists in agriculture and the forestry experiment station and the forestry products utilization laboratory to be jointly employed by those research organizations, and the appropriate [660] academic unit at Mississippi State.

Q. How many joint appointments are there at Mississippi State University between the Mississippi Agricultural and Forestry Experiment Station and the academic units?

A. It would be an approximation, but approximtely one hundred and fifty.

* * * * *

Q. Are there joint appointments between the academic units and the Mississippi Cooperative Extension Service?

A. There are. A relatively few compared to the research appointments.

Q. And can you tell me how many exist?

A. Somewhere less than ten or close to ten.

Q. Are there joint appointment between Mississippi Cooperative Extension Service and the Mississippi Agriculture Forestry Experiment Station?

A. At the present there are three.

[662] Q. My understanding is correct of what you just said, Alcorn – what is now Alcorn State University had been designated prior to, as a land grant institution, prior to the designation of Mississippi State University?

A. That is my understanding from reading the histories.

* * * * *

[3064] Q. Where has the federal government chosen to house federal agricultural research facilities in this state?

A. The primary locations for both the agricultural research service and the U.S. Forest Service are at Starkville, Stoneville, Oxford and Gulfport.

Q. Okay, Tell us briefly what all is located at Stoneville.

A. Stoneville, Mississippi, is the home of the Delta branch experiment station which is part of the Mississippi agricultural and forestry experiment station. It's also the physical location [3065] for several research units of the agricultural research service, a research unit of the U.S. Forest Service, a service and research unit of the U.S.

Weather Burea, the crop weather reporting station. The economic research service and extension specialists under the direction of the Mississippi Cooperative Extension Service are also housed at Stoneville.

Q. Okay. All right, sir. You mentioned the Mississippi agricultural and forestry experiment station. Precisely what is that?

A. The Mississippi Agricultural and Forestry Experiment Station is an entity created by the legislature of the State of Mississippi in response to federal statutes passed in the late 1800's. That entity is charged by both state and federal statute with the conduct of agricultural and forestry research to support the existing agricultural industries and rural industries of the state and to discover new knowledge that might lead to improved productivity and economic development in rural Mississippi.

* * * * *

A. I think I should point out, of course, that the legislation that created the experiment station designated that this entity would be responsible to the president of Mississippi State University, and through him, to the Board of Trustees Institutions of Higher Learning and ultimately the Mississippi [3066] legislature.

So the experiment station is, on the one hand, a separately funded state and federal entity, and on the other hand, an integral part of Mississippi State University and of higher education within the state.

Q. What is its relationship, if any, with Alcorn State University?

A. The experiment station, for many years, had an informal relationship with the faculty and administration in agriculture at Alcorn State, but beginning in the late 1960's, and specifically being formalized in 1971, the experiment station and Alcorn State joined in the creation of

the Alcorn branch of the experiment station throug' legislation at the state level.

In addition to the conduct of research jointly through the Alcorn branch, the experiment station scientists and administration participate with scientists and administrators at Alcorn State University in plannning and conducting other research programs authorized and funded for Alcorn State but not involving funds made available through the Mississippi legislature.

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[3083] **TESTIMONY OF DR. RODNEY FOIL**

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Q. You testified that you have approximately eight hundred undergraduates, I take it, seeking the BA in one of the agricultural fields?

A. It would be approximately eight hundred seeking the BS in the more traditional agricultural fields, yes, sir.

* * * * *

Q. And you have your three hundred graduate students. Focusing on your eight hundred grads, forgetting about the home economic students, approximately how many of those students are black now?

A. That's undergraduates?

Q. Yes.

A. My memory serves me correctly, approximately sixty.

[3084] Q. Sixty, sir?

A. That's my rememberance, approximately sixty.

Q. And about your three hundred graduate students, how many of those would be black?

A. Current year figures don't come to mind but approximately thirty.

Q. And if you would remind me, sir, you've been at Mississippi State for how long?

A. Since 1969.

Q. When was your first black student in the agricultural program there?

A. I do not have that information. They have been there almost since—as long as I've been there.

Q. Almost as long as you've been there they have had black students in agriculture?

A. At Mississippi State University, I know that. And I was in the school of forest resources for the first eight years that I was at Mississippi State and not in the college of agriculture.

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[3086] **TESTIMONY OF DR. RODNEY FOIL**

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Q. You think they do a good job at Alcorn?

A. I think so, based on my exposure to their graduates.

Q. Okay. What, in your view, is the mission that you just alluded to?

A. The mission is under the mandate of the Board of Trustees to serve as a regional university with primary focus on the residents of southwest Mississippi, but obviously the broader [3087] mission of attracting individuals who seek instructional activities and experiences in the environment that's offered at Alcorn State University.

Q. What do you mean by that, sir?

A. It's difficult for me to make it any more clear. They do have a regional mission comparable to the other regional institutions in Mississippi. They serve a segment of the population in a geographic part of the state that has a high percentage of rural limited resource individuals who might not otherwise be able to secure the benefits of a college education in the absence of an institution such as Alcorn State.

In addition, they serve a cultural group that has affinity for that institution through its long and illustrious history and the alumni relationships that result in desire on the part of parents to send their children to that institution so that they might also benefit from the experience that had served the parents well.

Q. You're saying basically it's been a black school and there's a lot of blacks that have gone there and their children go there?

MR. GOODMAN: That's not what he said and—

THE WITNESS:

A. That's not what I said.

MR. GOODMAN: —and I object to counsel characterizing it like that.

[3088] MR. CRENSHAW: It's cross examination, Your Honor.

THE COURT: The witness I think is capable of defending himself.

THE WITNESS: (Continuing.)

A. Uh-huh. I—

THE COURT: Overruled.

MR. CRENSHAW:

Q. What is the particular cultural group that you just alluded to, sir?

A. It is black citizens of this state.

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[3104] **TESTIMONY OF DR. RODNEY FOIL**

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Q. You may explain the mandate of the Farm Bill of 1977.

A. Thank you.

Q. If you would like, sir.

A. I'd like to. The Farm Bill of 1977 stipulated that recipients of funds under the provisions of the Hatch Act and of what's now known as the Evans-Allen Act should submit annually a comprehensive program of agricultural research for the states within which those institutions were located, receive approval of that comprehensive program prior to the expenditure of the funds made available under those two pieces of legislation.

Q. Now, Dr. Foil, could you state, then, what section fourteen forty-four of the Farm Bill of 1977 states? If you know it precisely or in a general sense, just – will you just relate what fourteen forty-four is?

A. I'd have to have my memory corrected if this is wrong, but it's my recollection that it is the definitive legislation which is now known as the Evans-Allen Act which did establish a program of research in the institutions authorized by the Second Morrill Act of 1890 plus Tuskeegee Institute to support agricultural research programs in those institutions.

* * * * *

[3122] Q. Excuse me, sir. What I was talking about was that in the late 1970's for the first time, sir, 1890 institutions started getting federal direct funding? Is that –

A. Uh-huh.

Q. Now, that's what – and I was saying when they got direct funding there was restrictions on them using the federal money to pay fringes; is that correct?

A. That's correct.

Q. And that's when the state legislature first funded them to pay fringes for federal money? Now, if you want to explain that, you may. Is that not correct?

A. No, you have now not explained it. And the answer to your point is yes.

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[675] **TESTIMONY OF DR. SAMUEL LEE DONALD**

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Q. Dr. Donald, by whom are you employed?

A. Alcorn State University.

Q. In what capacity are you employed?

A. I am Director of the division of agriculture, research, extension and applied sciences.

Q. Dr. Donald, what is your employment history at Alcorn Universtiy?

A. I have been employed at Alcorn since August 1, 1979. O have served the institution as associate professor of agriculture and economics, and the administrator of the units I just mentioned.

[676] In 1981, I became administratively responsible in extension and research.

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[683] Q. With reference to the thirteen counties, in which Alcorn operates an Extension Program, is there another Extension Program, in operation now in those counties?

A. Yes.

Q. And what Extension Program is that, please?

A. The Mississippi State Extension Program.

Q. Is there –

A. Corporate Extension Service of Mississippi State.

Q. Is there a cooperative effort in those thirteen counties between the two Extension Programs?

A. Yes.

Q. Would you describe that effort, please.

A. Well, I will use the term "by law". There can be only one Extension Service in the State, and the individual that is responsible for the Extension Program in a given county is the county agent and/or the county leader.

In most instances that is the county agent. So, the—the plans of work speaks to one Extension Program in that [684] county.

Our program assistants are supervised on a day-by-day basis by the county leader or county agent.

Q. All right.

A. We do plan our programs together, our plan of work goes into Washington under one umbrella or under one folder.

It is the Alcorn and Mississippi State plan of work. I think they are separated in the folder.

You can identify the Alcorn program from the Mississippi State program. I think they are separated in the folder.

You can identify the Alcorn program from the Mississippi State program.

Q. I believe you have indicated that your—that the Alcorn Extension Program is limited by resources, by funding?

A. Yes.

Q. Has Alcorn sought to increase its funding?

A. Yes. We attempted to get more of the funds that comes to us from the Federal Government, and on some occasions we have asked the State for more funds, but we do so through Mississippi State.

Q. Why did you seek your funds—why does Alcorn seek its funds for the experiment program through Mississippi State, in other words?

A. It is difficult to say, but in—in times of not having the right—as I understand it, not having the right clout [685] with the State legislators, it was decided that it was better to go through Mississippi State and ask them to include in their budget a budget line item for Alcorn State University.

And that is the way we receive the hundred and eight thousand dollars, in a line item in the Mississippi State budget.

When we want additional funds, we just simply mention it to either the President of the Extension Administrator or Extension Director of Mississippi State, and our request is either honored or not.

* * * * *

[687] Dr. Donald, does—does a research program in agriculture land grant have an impact on agricultural resident instruction?

A. Yes. And it does so in the fact that the facilities and equipment and so forth that we purchased for research was also used in our teaching unit, and it is not—it is not illegal to do that.

It is not an audit negative finding to find at any institution where you have joint appointments or joint activities where the facilities for one is used for the other.

So, that is the greatest impact that it has had. The research has allowed us to increase our staff, because through joint appointments now we can have twenty warm bodies where before we had only maybe ten or twelve.

Q. Dr. Donald, does an Extension Program impact on a research program?

A. Yes. It would probably have more in the future than it has had in the past, because we are encouraged at the federal level to have more coordination between research and Extension. Research finds answers to problems for which Extension carries to the client, as the Extension is sort of a dissemination arm of our research efforts.

[688] Q. Dr. Donald, does the Extension Program have some type of resident instruction?

A. Yes. Along the same lines, the information that we get from the researchers and the information that we put together for Extension purposes, that information is also taught in the classroom.

Teachers carry that information to their classes, not only the one that we teach on campus, but those that might teach in outlying areas, so the Extension does have an impact on resident instruction also.

* * * * *

[692] Q. Could you just summarize as to what, in your opinion, as to the relationship with A.S.U. and M.S.U. as far as the land grant program is concerned?

A. I feel that we have got a good working relationship between the two institutions for our land grant activities.

It could be better in some respects, as any relationship probably could be. The funding that we receive directly from the State is not to the level that we would want for what I consider to be a well-rounded quality program that our clients and our students need, but the relationship that we have, the relationship that we have developed over the years is a good relationship.

We can pick up the phone, we can talk to each other. Now, about programs, about activities that we might want to jointly sponsor or participate.

Mississippi State is an institution that has a lot of resources that Alcorn can draw upon, especially when you are talking about Research projects or Extension activities, but that relationship is a relationship. The needs go beyond that relationship.

* * * * *

[697] Q. Now, just a question or two about Extension for clarification.

A. Okay.

Q. You said on direct examination – but now I will ask [698] you – by law by law a single Extension Program was required for each state, did you not?

A. That's correct.

Q. Are you referring to State law or Federal law?

A. Federal law.

Q. Federal law?

A. Yes.

* * * * *

[702] **TESTIMONY OF DR. RUPERT G. SEALS**

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[717] Q. Dr. Seals, what is a land grant institution?

A. A land grant institution can be defined several ways. I like to use two ways, if I may.

One is it is defined by congress. The original legislation enabling land grant institutions was passed on July 2nd, 1862, which porposed to allow states to either sell federal land equally to, thirty thousand acres to Congress, and put the fees or funds into a permanent endowment, or if the State did not have land, they would give it script.

The colleges so set up were to teach specifically agriculture and mechanical arts, as well as any other classical subject that the college may choose or that the people may choose.

In 1887, an Agriculture Research Act was passed, which specifically in the title of the Act, as well as elsewhere in the Act, connected it to the July 2nd, 1862 Act, except this specific Act was for agricultural research.

In 1913, the specific Act was passed for agricultural extension for farmers, and this specific Act was also connected to the July 2nd, 1862 Act in the title of the Act, and the – These three Acts with their wording and with their

connectural nature, really defined the land grant college.

It is to teach agriculture and mechanical arts, but also [718] to do research in agriculture through what is called experiment stations in each state and/or its subdivisions, and to extend knowledge to farmers as of the 1913 Act.

* * * * *

[736] Q. Dr. Seals, in your experience as an administrator of land grant colleges, and also your experience with the United States Department of Agriculture as a coordinator of the 1890 land grant program, is there an impact on the resident instruction program of a land grant institution by a research program?

A. Yes.

Q. And would that impact be?

A. The impact would be first the student, whether he be a graduate or undergraduate, has the opportunity to be exposed to a professor who is on the cutting edge of his field.

The pro[illegible] is not reduced to relying on just reading materials f[illegible] overall experience.

Okay. An[illegible] added advantage or another advantage of this, of having research is that the graduate students are—are, of course, employed, graduate students are just a little bit older than undergraduate students.

An undergraduate student gets used to seeing a graduate student around. An undergraduate student may, as a result [737] get to participate in a part of research that if it were not going on, he would not get to participate possibly in doing some of the work on a college work study basis.

The advantage for the university itself is that it is—it is accepted that programs strengthen undergraduate programs because the professors in research usually are in graduate programs where master's or doctorates or both are given, and this is the same professor who teaches undergraduate, along with his graduate program. This is

know to strengthen undergraduate programs.

Q. Again, relying on your experience as an administrator at a land grant institution, your experience with the United States Department of Agriculture, your relationship to land grant programs and your education in the land grant area, is there an effect upon research by an Extension Program?

A. Yes. It is probably not always ideal in terms of the individuals who are involved, but ultimately Extension has an impact on the type of research that is done.

The theory, the problems that the Extension worker sees up in the field with farmers and so forth are communicated back to the university and to fellow researchers, who are his cohorts and depending upon the nature of the problem, it is worked upon and ultimately results are gotten back out.

It is not quite as simple as that, because the collective land grant system actually reinforces itself. Sometimes a [738] problem need be solved across State lines, depending on what the commodity is, and it is fed back that way, but the system reinforces itself.

Q. Dr. Seals, would it be your opinion—do you have an opinion whether or not an institution, a land grant institution that does not have a Research Program, whether or not that land grant institution's resident instruction program is negatively impacted?

A. Is what?

Q. Negatively impacted by the absence of a Research Program?

A. Yes, I have an opinion.

Q. What is your opinion?

A. My opinion is that an undergraduate student in such a situation does not get the feel of how research is done and what kind of efforts and work and resources it takes to get it, and I think that is a negative impact on that particular individual.

Q. Is a resident instruction program impacted negatively by the absence of an Extension Program—by an Extension Program?

A. Yes. Probably not in as direct a fashion, but, again, at Nevada, for instance, we are relatively a small institution.

We have had at least one or two people who are Extension specialists located on campus teach a course once every year.

That practice has proved to be important to us at least, [739] because it allows to use expertise that is already located on the campus and hopefully we do it at least cost, or least interference to the Extension person or persons themselves.

So, that is a—that can be a direct impact. I don't know that that is used very much. The other impact is that students come into contact with these people, particularly high school 4-H'ers, and I have seen many instances were they are influenced to come to college number one, and maybe major agriculture or some aspect of agriculture, number two.

* * * * *

[742] Q. I asked you if in light of your experiences as an administrator of two colleges of agriculture, if you had an opinion concerning the quality of education that a student at Alcorn State University in its land grant program would receive, and you said you did have an opinion, and I have now asked you what that opinion is?

A. Given pre-federal activity at Alcorn in terms of Extension, and given the very limited faculty that Alcorn had at that time, even with the programs that it was offering, there is no doubt in my mind that the students, or a student in such a program would complete the program without those contacts with the faculty that one assumes

that he gets from a very well-rounded education in a particular field he is in.

One of the advantages of joining a mature land grant institution is that instead of having three faculty in a particular curriculum or two faculty teaching fulltime, you have seven, ten, twelve, fifteen or twenty who can begin to go into subspecialties. The student cannot avoid being [743] helped by such a situation.

* * * * *

[770] Q. Could you please make a comparative analysis, if you could, please, sir, between those programs at Alcorn State University and the program at Mississippi State, if you can, please, sir.

A. Yes. The College of Veterinary Medicine is a thirty-two million dollar edifice before the program got started. [771] There is no College of Veterinary Medicine or similar facility at Alcorn.

The Forest Products Utilization Laboratory. The Forest Products Utilization Laboratory was authorized, I believe, in the early 70's, and went from a very small budget to the budget of several million at present. There is no such area at Alcorn.

I might say that the MAFES headquarters is located in the building. They call it the College of Veterinary Medicine.

Bio-chemistry is one of the departments in the College of Agriculture and certainly has a research function, and some of this type of research, I have done.

Alcorn has nothing closely resembling that. The Mississippi Agriculture and Forestry Experiment Station itself is probably bigger in personnel than Alcorn State University professional personnel, the entire campus.

* * * * *

[776] MR. GOODMAN: To which we object, if the Court, please, for two reasons. It is repetitious. He just asked the witness to give him the perameters of land grant, which he did extensively.

Additionally, this question is leading.

THE COURT: Objection sustained.

MR. CRAMBLISS: Well, I—yes, Your Honor. I will back it up a little bit.

Thank you, Your Honor.

Q. Mr. Seals, during your period of examining Alcorn curricula, did you have an occasion to ever see on the drawing board attempts to start engineering endeavors?

A. No, I did not.

MR. GOODMAN: To which we object as being irrelevant to the issues in this lawsuit.

MR. CRAMBLISS: I will keep going.

Q. Could you go to 1985, page 152, IHL.

Just, again, just underline, and you can start there with one, two and three over the past year, but if you will just read the underline and then one, two and three over to—

A. Under that particular part of the paragraph, number one—

Q. Yes, sir. Then go on. Yes, sir.

A. And as I see here—Counselor, how did you want me to [777] respond to that?

A. Start, number one, two and three, and then you are finished.

A. I am sorry, I don't see three.

Q. Three says, a State increase in the number of industrial contractors at various segments of the wood using industry.

MR. CRAMBLISS: May I please the Court?

May I approach the witness?

A. Okay. I am sorry. I do see it now.

Number one, the award of the five hundred thousand, three year grant by EPA for work related to the onsite removal of toxic chemicals via land farming.

Two, receipt of a special wood utilization research grant from USDA for four hundred and thirty thousand dollars.

The next one, probability of renewal next year.

The State increase in the number of industrial contracts and various segments of the wood using industry.

Q. Yes. Now, could you—at the bottom, the underline, could you read what that is now?

A. Mississippi Agriculture and Forestry Experiment Station.

Q. Now, could you read the next to last paragraph. It is very short. Certainly the most notable.

A. Certainly. the most notable event during the past year was a full authorization for funding a warm water agricultural research center for Mississippi.

* * * * *

[778] Appropriations of three point five million dollars each was secured from the Mississippi legislature and the United States Congress in 1985.

These funds will enable construction of the most modern facilities in the United States and contains support for five years for high priority agricultural research at Starkville—at Stoneville.

Q. Keep going. It is short, two sentences.

A The Mississippi Legislature also authorized funding for a food product development program.

This additional funding, combined with the establishment of the new department of food science and human nutrition should greatly increase activity in the State's food processing industry.

Q. Okay. Thank you.

Now, the last one is 1986, the current one, please, sir.

A. All right.

Q. Page 155, please, sir. If you will just read the underline.

A. Mississippi Agriculture and Forestry Experiment Station.

Q. No, no. Well, you have been through that.

There is no need in going over those programs there. They are different, but we do not want to waste the Court's time, but based on what you did, Dr. Seals, did you have an occasion to meet with the various entities and find out just

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[784] Are you familiar with the relationship that exists between Alcorn State University and Mississippi State University, as it relate to Alcorn State having the ability to form a separate entity with USDA, are you familiar with that?

A. You mean to have a Cooperative Service with the USDA?

Q. That's correct. Do you understand my questions? Don't ask me. Do you understand what I am saying?

A. Yes, sir. Historical times get involved here.

Q. But the Court needs to know this.

A. Yes, if I may say that. Historical time is involved here. The ability over the last one hundred years of Mississippi State first to be assigned certain duties, such as, special stations, such as the Extension Service, as a land grant college, and the legislation ask or requires that these duties be assigned to the land grant college or colleges, and in the original legislation, as it is called it, is plural and singular, rather, the assignment of these in 1988 the Experiment Station, 1916 Extension Service, their ability to then get federal funds, to match or even overmatch, which they do in this State, with State funds, and

other kinds of abilities, which I could cite, which over the years have given Mississippi State the ability to track these kinds of [785] installations.

Alcorn has been left out, if I may say, of possibly in the land grant area over these years whenever, though, it had the resident teaching function.

Its officials up until recently in the last decade and a half had virtually no interaction with other officials in the State relative to the land grant policy in this State.

When you do not have that ability to interact, you do not have the ability then to attract these kind of installations, which ultimately reflect upon your instructional capacity.

Agricultural research personnel, for instance, many times serve on committees for graduate students as advisors or as committee members, which means—which would mean that they would have input into thesis direction, sometimes even the thesis project may be in a particular area that they are working in, so the student only has to cross the street and get to work. These kinds of availabilities are not available to Alcorn.

The ability, then, of Mississippi Agricultural and Forestry Experiment Station and Cooperative Extension Service to a lesser extent and the College of Agriculture, as a whole, to attract additional agencies and funds is due to the historical generous funding of those units and the ability to interact both within the State and on the national level [786] for attracting these kinds of facilities.

It certainly has the quality and adds to the quality.

[835] * * * * *

CROSS EXAMINATION

* * * * *

Q. Dr. Seals, desegregation was not your assignment from the Justice Department, was it, sir?

[836] A. No.

Q. As a matter of fact, you do not hold yourself out as an expert on higher education in desegregation, do you?

A. No.

Q. Your assignment was to review the resources emanating from the State of Mississippi to two land grant colleges to determine if any disparaties exist, is that correct?

A. That's correct.

Q. And in making that review, you limited yourself to what you considered to be land grant facilities?

A. Land grant facilities and resources, yes.

Q. Now, you received your assignment from the Department of Justice, I believe?

A. Yes.

Q. Not the United States Department of Agriculture?

A. That's correct.

Q. When you used the term disparity in describing your assignment, you are simply talking about differences and the size of that difference, are you not?

A. Yes, yes.

Q. I believe you told us yesterday afternoon that you reached the conclusion that there was a vast difference in allocation for instruction between Mississippi State University and Alcorn State University?

A. In terms of land grant activities, yes.

* * * * *

[838] Q. How much larger is Mississippi State than Alcorn?

A. In what terms?

Q. In terms of overall size.

A. You are asking me about the campuses of the land grant?

Q. Overall.

A. I have not looked into that.

Q. Did you make an analysis based upon the respective sizes of the student bodies at the two institutions.

A. I know the sizes as of, I believe, Fall of 1986 in terms of enrollment.

Q. Well, tell us what those enrollments were?

A. Two hundred, I believe, at Alcorn, and eleven ninety-eight at Mississippi State.

Q. Are you talking about enrollment in agriculture?

A. I am talking about enrollment in agriculture, yes.

Q. All right, sir. Do you know the overall enrollment of the two institutions?

A. No. I do not.

Q. Did you make an analysis considering the number of degrees in agriculture granted by each institution?

A. Not recently, no.

Q. Sir?

A. Not recently.

[839] Q. Well, I am just trying to find out what you did, and is it correct that what you did was you compared dollars received and buildings and programs at the two institutions?

A. Yes.

Q. And simply subtracted one form the other?

A. The subtraction is implied. I did not carry it out.

Q. Well, tell the Court, if your assignment included an analysis based upon whether the resources flowing from the State of Mississippi were adequate or inadequate for educational purposes?

A. That was not my assignment.

Q. Adequacy was not a part of your assignment?

A. No.

* * * * *

[840] Q. What about efficiency, did your analysis take into account the efficiency of land grant programs at either or both institutions?

A. No, that was not my assignment?

Q. Did your assignment take into account curriculum needs at either institution?

A. I did not do a needs assessment. I merely looked at what they had at present and that well reflects past funding patterns.

Q. But you did not look at whether they need more, did you?

A. No, I did not.

Q. You did not look at whether you thought Mississippi State University had too many programs or too few programs in agriculture, did you?

A. No, I did not.

Q. You said at your February 6th, 1987 deposition, I believe, that you were not assigned to evaluate motive or intent or [841] good faith on the part of the State in allocating resources to these institutions?

A. That was not my assignment, that is correct.

* * * * *

Q. Your are really telling the Court as an expert, aren't you, Dr. Seals, that agriculture and forestry research is an educational activity?

A. Yes.

[842] Q. Are you telling the Court as an expert that you see a direct connection between instructional programs and research programs?

A. Yes.

Q. And are you also telling the Court as a land grant expert that Cooperative Extension work is an educational activity?

A. Yes.

Q. Aren't you?

A. Yes.

Q. As a matter of fact, that is the activity where the education is carried right to the consumer, right to the consumer, right to the public, isn't it?

A. Yes.

* * * * *

[843] Q. Now, tell the Court whether or not it was federal legislation which officially initiated land grant colleges?

A. I would say that in terms of initiating or officially initiating land grant activity, yes.

There were some colleges which we would not use to term land grant on that were established before the federal legislation.

Q. But as a practical manner, this all started in 1862 with the Morrill Act, didn't it?

A. The first or official legislation, yes, sir.

* * * * *

Q. And one definition of a land grant college is a college entitled to support from the Federal Government under the provisions fo the Morrill Act?

A. I would say that is correct.

* * * * *

[844] Q. Now, tell the Court which agencies of the Federal Government are involved in the funds and services associated with land grant institutions?

A. Let me start at the top. The primary department of Government responsible in Washington D.C. is the United States Department of Agriculture.

Q. All right, sir.

A. Which as we saw earlier has many agencies. It is subdivided into several divisions, each of which has three to six or so agencies.

The present division which houses the land grant agencies is called Science & Education Administration, headed by the Assistant Secretary.

It encompasses at least four or more agencies. Two of those agencies, one being the Cooperative State Service, which handles research funds going to the states, and the Federal Extension Service, another separate agency within that same Science & Education Administration, which handles Extension funds going to the states.

Of course, they are administered subject to the laws which we referred to this morning.

Q. All right, sir. I appreciate that.

Without being unduly complicated, then, is it accurate to say that the CSRS, which is part of the Department of Agriculture, [845] handles research money?

A. That's true.

Q. While the Federal Extension Service, is a part of the Department of Agriculture handles Extension money?

A. That's correct.

* * * * *

[847] Q. Maybe I overstated it a little in my question. Lawyers do that some times on Friday.

Let me ask it this way. When Federal Government sends federal money, Hatch money here to Mississippi, does the Federal Government have something to say about what it is going to be spent on?

A. Oh, yes.

Q. Does the Federal Government know before it sends it the type of programs that it is going to be spent on?

A. Yes. It has already been reviewed first.

Q. Already been reviewed by the Federal Government?

A. That's right.

Q. The budget has been reviewed?

[848] A. That's right.

Q. The plan for the use of the money has been reviewed?

A. That's right.

* * * * *

[849] Q. Does the United States Department of Agriculture recognize the Mississippi Agricultural and Forestry Experimental Station as the station in Mississippi to receive Hatch Act funds?

A. That's correct.

Q. And that has been true for a long time, to your knowledge, hasn't it?

A. Yes.

Q. Okay.

A. Since 1888.

Q. In addition, isn't it not a fact that the United States Department of Agriculture also administers a separate research program at each 1890 institution in this country?

A. And—yes, that is correct. As I think I said this morning, that came about largely as a result from the resistance of the states to sharing with 1890 institutions.

[855] Q. Is one purpose of the station to devleop new products?

A. That is done by stations. It is—it is an iffy affair, because you cannot always patent it, and no company wants to buy from you, but that is done from time to time, yes.

Q. That is one purpose of the research, is it not?
A. Yes.
Q. Is one purpose to improve products?
A. Yes.
Q. Is one purpose to develop new processes?
A. Yes.
Q. Is one purpose to develop and enhance product quality?
A. Yes.
Q. Indeed, is the purpose to improve consumer health and well being?
A. Yes.
Q. For the public?
A. Yes.
Q. Black and white?
A. Yes.
Q. And is the mission of the Mississippi Agricultural and Forestry Experiment Station educationally sound, based on your investigation?
A. Yes.

* * * * *

[863] Q. [864] Putting race aside for a moment, as an educator, isn't it a fact that it is important within any state system to have a land grant university at the highest possible academic level, at the highest possible research level, and with the highest quality of Extension work available?
A. I cannot disagree with that. The only thing I am trying to say to you, you could take that concept at any level. At any level you could say that – that a regional land grant university would give you a – the highest level capability and so forth.
So, I don't know that that necessarily follows.

Q. All right. Dr. Seals, are you aware that black students attend Mississippi State University?
A. Yes.
Q. All right. For example, do you have there in front of you this annual report of the Board of Trustees of 1983 that Mr. Chambliss handed you this morning?
A. Yes, sir.

* * * * *

Q. And would you read, please, about the black participation?
A. Within the student body, there were thirteen hundred forty-one black students at Mississippi State, some twenty-five black teachers, who have been reaccredited since 1976.

* * * * *

[865] institution probably could offer better quality than a small one?
A. Yes, that is – I think that is a given. I don't think it is an equal.
Q. All right. And you meant by that, I take it, better quality of instruction, better quality of research, is that what you meant?
A. Yes, sir.
Q. Better quality of research for the benefit of all citizens, black and white, is that what you meant?
A. Okay.
Q. Sir?
A. Yes.
Q. Better quality of Extension work, for all citizens?
A. Okay.
Q. Black and white, is that what you meant?

A. Okay.

Q. Now, currently, how many blacks are enrolled as students in agriculture and home economics in the State of Mississippi?

A. I—that was not part of my assignment, and I think you asked me earlier would I consider myself a desegregation expert. No, I do not have that information.

Q. Well, if it is true that there are currently approximately three hundred and twenty black students in the State of Mississippi enrolled in agriculture and home economics, and [866] if it is true that ninety-one of those are at Mississippi State University, then would you agree with me that approximately thirty percent of the black students in those fields in this State are directly benefitting from the quality offered by a major land grant institution?

A. I could not disagree with that.

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[895] **TESTIMONY OF DR. EDSEL E. THRASH**

THE WITNESS: My name is Edsel E. Thrash, T H R A S H.

* * * * *

[897] Q. Dr. Thrash, where are you currently employed?

A. With the Board of Trustees of State Institutions of Higher Learning for the State of Mississippi.

Q. And in what capacity are you employed?

A. My title is the Executive Secretary and Director of the Board.

Q. How long have you held this position with the Board?

A. I have been affiliated with the Board since January of 1968. I have held this position since June 25th, 1968.

Q. All right. Dr. Thrash, what are your current duties and responsibilities as Executive Director, as Executive Secretary and Director of the Board of Trustees staff?

[898] A. My basic responsibility is to be knowledgable of the ongoings of higher education in the State and make appropriate recommendations to the Board of Trustees for governing authority decisions, and I am the liaison officer between the governing Board and the administrative operations of the universities.

[914]

* * * * *

Q. Thank you, Dr. Thrash.

Dr. Thrash, regarding the admission standard adopted by the Board of Trustees subsequent to the 1976/77 academic year, are you aware of the reason for not including a reference to high school grades or class rank in the admission requirements for the historically white institutions?

A. There was a serious lack of confidence in high school grade point averages across the state.

Q. Yet high school grade—excuse me.

A. Regardless of the national studies pertaining to grade point averages in high school, it was our belief that the standardized test would be to the best interest of all concerned, especially since the minimum requirements were so low in comparison to scores across the country.

Therefore, we did not include in our admissions standard, other than the flexibility areas, whereby high school grades would be considered in the admission standard.

Q. Dr. Thrash, high school grades were included in

the [915] admission standard of two of the historically black institutions, isn't that correct?

A. That is true.

Q. How did the Board reconcile its concern about high school grades with reference to the five historically white institutions admission policies with the use of the high school grades for use with two of the historically black institutions?

A. I do not recall percisely. I would suspect that the institutions may have had some input that would encourage the Board to identify that.

Q. But you don't recall the Board of Trustees reasons?

A. (Witness shakes head negatively.)

* * * * *

[919] Q. Is it within the discretion of an individual institution, Dr. Thrash, whether or not it will admit the total number of students that it may be permitted to do so under the quota?

A. Yes.

Q. As one of the historically white institutions, Mississippi University for Women discontinued the practice of admitting students with less than the 15 composite score on the ACT?

A. Is that a question?

Q. Yes, sir, that is a question.

A. I am not sure of the correct answer of that.

Q. Do you know, Dr. Thrash, whether Mississippi University for Women continues to admit students with ACT scores of 9 to 14 to its institution?

A. It is my understanding that Mississippi University for Women has been somewhat more limiting in their enrollment minimum in recent years.

Q. Okay.

A. I do not know the specifics. As long as they adhere to the basic requirements of the board policies, then they have the flexibility to adjust their admission standards upward at their discretion.

* * * * *

[929] Q. Are there specific educational or occupational qualifications for membership on the Board of Trustees.

A. The constitution specifies the qualifications for the Governor to use. I do not think it identified education or professional areas of importance.

Q. How many members are there on the Board of Trustees altogether, Dr. Thrash?

A. Thirteen.

Q. Dr. Thrash, I show you United States Exhibit 761. (Document passed.)

MRS. JOHNSON-BETTS:

Q. Dr. Thrash, of those persons serving presently on the Board of Trustees, if you will look at United States 761?

A. Yes.

Q. Could you identify the occupation of the members presently serving on the Board of Trustees, those that you know?

A. Mr. Bordeaux is an attorney, Mr. Bycus is a businessman [930] with special interests in lumber and timber, Mr. Jones is employed with the bank, Mr. Watson is now retired but was previously employed with the State School System, Mr. Rodgers is a businessman dealing with liquified petroleum gas and related matters, Mr. Jacobs is an attorney, Mrs. Betty Williams is superintendent of the

school, Dr. Lovelace is a physician, and Dr. Robert Harrison is a dentist.

You turn the page. Mr. Bobby L. Chain is a businessman, electrical fixtures, equipment, oil and gas, et cetera, Ms. Marion Simmons is previously a school teacher, Mr. Travis Parker, farming intrests, soybeans, rice, and Mr. Woods is an attorney.

Q. Okay.

A. Moving on to the next board, beginning in May of 1984, Mr. Bycus is an attorney, Ms. Martha Gill is no longer on the Board. She was a school teacher. Mr. Hickman is an attorney. Mr. Rushing is a bank executive. I have mentioned all of the others.

Q. All right, sir.

A. I may have missed Mr. Austin. He is an attorney.

* * * * *

[934] Q. Dr. Thrash, how many of the persons presently employed by the Board of Trustees in terms of the twenty-three persons on the operations staff are black?

A. May I name them for you?

I do not know the number without counting them.

Q. That is fine, sir.

A. Dr. Charles Pickens. He is the Academic Officer of our Board staff.

Ms. Bradford is a black person in charge of other office staff.

Ms. Eunice Avant is an accounting person responsible for the payroll, fringe benefits, purchasing of supplies.

Mr. Andrew Curry is the Chief Accountant of our office staff.

Ms. – Ms. Fannie Ware is responsible for our records and documents.

[935] and Mr. Nelson is a new employee in the management information system.

How many is that?

I believe that covers those employed on the Board staff that has direct input to Board recommendations.

Q. Dr. Thrash, of the six persons whom you named, how many of those persons would be appointed or would be designated as professional staff persons?

A. Dr. Pickens, Mr. Nelson, Mr. Curry, and Mrs. Bradford.

* * * * *

[938] Q. Dr. Thrash, what specific efforts were made by the Board of Trustees to enhance the quality of programs offered at the traditionally black institutions?

Now, since the 1974 Plan of Compliance.

A. At Jackson State, There were ten, twelve or thereabout new master's degree programs authorized.

* * * * *

Q. Excuse me. In terms of enhancing the quality of academic programs offered at the traditionally black institutions.

A. For each institution, there would be different things.

Q. Yes, sir. If you want to go that way, fine.

A. And that was one at Jackson State.

Q. All right, sir.

A. Plus a new unique program in meteorology was authorized for Jackson State.

The University Center located in Jackson has been

drastically curtailed, and, in fact, with few exceptions, courses offered by the other universities have been discontinued. Now, other than those exclusively available at other institutions, such as, achitecture at Mississippi [939] State, that is offered in Jackson.

The master's program in engineering continues to be offered in Jackson by Mississippi State and the University of Mississippi.

Other than that, the University Center is more and more utilized by Jackson State University. In fact, their continuing education staff has recently moved to the University Center headquarters.

Q. Dr. Thrash—

A. For Alcorn State University, we approved an associate degree and baccalaureate program in nursing.

Now, in all of the historically black institutions, we have adjusted our funding formula so that it would recognize the program responsibilities of the different institutions in such a fashion that they would receive fair and equitable funding from the State appropriated dollars.

* * * * *

[943] Q. Other than the specific type of specialized fields of study or areas of study you have identified for an urban institution, how would the mission of an urban institution differ from the mission of a comprehensive institution in the abstract?

A. It is more limited in the areas of study and levels of study and research and public service responsibilities.

* * * * *

[947] Q. Dr. Thrash, has the Board of Trustees reviewed the progress made by individual institutiosn of higher learning in terms of attracting other race faculty persons to be employed at those institutions?

A. The Board of Trustees has encouraged the universities [948] to search for faculty members of other race.

It has provided additional resources for this to be done. It also has obtained progress reports from year to year pertaining thereto.

Q. Regarding the progress reports submitted by the institutions has the Board of Trustees offered any comment to those institutions regarding their progress in recruiting other race faculty persons?

A. From time to time, discussions pertaining to the reports have taken place, and the Board continues to encourage all institutions to do the best they can with the resources available.

Q. Okay.

A. And the last accounting I had, we had over the years increased our black faculty members for our historically white institutions somewhere between fifty and sixty individuals.

* * * * *

[950] Q. I direct your attention to page 12 of this document. Under number one, Dr. Thrash, did the Board undertake or did the Board obligate itself in the Plan of Compliance to make special efforts to employ, train and promote qualified members of the other race?

* * * * *

THE WITNESS: The Board of Trustees instructed the institutions, and this is a voluntary decision on the part of the Board.

This plan is not an obligation. The plan was voluntarily entered into by the Board and no one else accepted the plan.

The Department of Health, Education and Welfare officials indicated that this was a satisfactory component of a plan.

A. But this is a voluntary thing, and as a result, obligations and instructions to the Baord—by the Board of [951] Trustees to the institutions was simply, this is a plan that, let's implement to the best of our abilities with the resources available.

Q. Dr. Thrash, on page 12, I asked, did the Board of Trustees undertake a commitment—commitment is better for you—to exercise special efforts to employ, train and promote qualified members of t[illegible]her race?

A. That is true.

A. Thank you.

What steps, Dr. Thrash, if any, has the Board of Trustees taken to attract qualified other race persons to institutions of higher learning for employment as faculty?

Could you reference for me, please, the time period to which you refer.

A. If I recall correctly, this document was approved in 1974, I think.

Yes. The Board of Trustees requested special appropriations from the legislature, not recalling the precise year or time, but very soon after this was adapted.

Approximately a million dollars a year was appropriated for special use in efforts of this nature, efforts that are identified throughout the plan. That was a million.

And the institutions took these resources, meager as they were, and used them for various aspects of the voluntary commitments of the Board to encourage the institutions to [952] improve other race faculty.

Q. Okay.

A. The Board initially attempted to assist the universities with what were called Faculty Clearing House, whereby as institutions received applications from potential faculty members, if they did not employ those faculty members themselves, they would forward to us the credentials and we would maintain them.

We did maintain an inventory for a number of years. This did not prove to be a workable plan, so eventually we discontinued it.

Basically, the Board encouraged the institutions to take the resources available to make special efforts to recruit other race faculty members and provide some funds to do so.

Q. Dr. Thrash, regarding your reference to the Faculty Clearing House, during what years did the Board of Trustees maintain the centralized file?

A. I do not recall specifically. I would say three or four years at best.

Now, following the instructions to implement the plan as we could with the resources available.

Several years we maintained an effort to assist institutions in recruiting other race faculty members. This did not work.

Q. Did the institutions use the file maintained during [953] the three or four years that the file was maintained?

A. Some did, very sparingly because it was contrary to the basic procedures used by department heads, faculty members, deans in recruiting faculty.

Q. Was there a specific obligation in the Plan of Compliance regarding the maintenance of the centralized pool of applications from faculty persons not hired by a particular institution?

A. The Board included that in the final document of the plan.

Q. And was it also included in the final document of the plan that institutions would use the centralized pool for recruitment of other race persons, the faculty positions?

A. That did not prove to be a satisfactory procedure.

Q. My question, Dr. Thrash, was it also included in the Plan of Compliance?

A. Yes. It was included, okay.

* * * * *

[955] Q. Is that a million dollars for all eight institutions of higher education?

A. Yes.

Q. All right.

A. Of course, that was a special identified amount. All of the appropriations allocated to the institutions, the Board has asked the institutions to implement the plan as best they could with the resources available, and the institutions use substantially more dollars than just this million dollars that we are talking about here in the line [956] item or allocation process.

Q. Dr. Thrash, does the Board of Trustees post or advertise faculty vacancies at institutions of higher learning in an effort to increase other race faculty employment at the various institutions?

A. The Board does not advertise. The institutions initiate the employment of faculty members, and in following the process of the recruiting department head's selection, dean approval, vice president's approval, president's approval, it comes to the Board of Trustees for final approval of faculty appointments.

So, the Board does not get directly involved in the recruitment of faculty members.

* * * * *

[959] Q. Does the Board of Trustees usually approve faculty appointments to institutions of higher learning?

A. Yes.

Q. Has the Board of Trustees, Dr. Thrash, requested that historically white institutions or to the Board of Trustees their excess or overflow of applications from persons seeking [960] faculty positions to those institutions?

A. As I indicated previously, that has been – that was done for several years following the implementation efforts of this plan, andit has been discontinued.

* * * * *

[1070] **TESTIMONY OF DR. E. E. THRASH**

THE COURT: Okay. What is the Plan – what does the Plan say there?

THE WITNESS: All right. This part of the Plan deals with special efforts with scholarships for recruiting [1071] qualified graduate students of the other race to be trained and employed as future teachers at the institutions of higher learning in Mississippi.

The Board of Trustees approved in this Plan this

paragraph. Each year a total of ninety new minority students are anticipated to participate in this program.

By 1980, the seven year accumulation will provide a potential of six hundred and thirty additional minority faculty.

During the seven year term of the Plan, a substantial amount in dollars will be invested, in addition to minority faculty.

The Board will make a special request to the 1975 Mississippi legislature session for three hundred and forty-five thousand dollars to underwrite this program during the 1974/75 school year.

* * * * *

Q. The gist of the question is, did you not commit to employ [1072] six hundred and thirty blacks at the historically white schools during the period of the Plan?

* * * * *

Did the Board commit to hiring that number of blacks?

THE WITNESS: The Board did commit to this number of minority faculty with the understanding that the special request to the 1975 legislative session would make dollars available.

The dollars were not made available. The Board has utilized other funds to assist in implementing this Plan to the best of our ability with the resources available.

* * * * *

[1076] **TESTIMONY OF E. E. THRASH**

Q. Is it not true that—is it not true that starting in 1972, in terms of the Board composition, is it not true that starting in 1972, the Governor of the State of Mississippi appointed its first black member to the Board of Trustees?

Is that not true?

A. Yes.

Q. And is it not true that every governor since that time has appointed one black to the Board of Trustees Institution of Higher Learning?

Is that not true?

A. That's true.

Q. All right. Is it not true that presently there are three black members on the Board of Trustees of the Institutions of Higher Learning out of thirteen?

[1077] A. That's true.

Q. All right. Is it not true that during this same period of time, the Board of Trustees has never appointed a black to the LaBauve position?

A. Well—

Q. Nobody, nor has ever appointed—

A. That is true.

Q. And is it not true that you had various vacancies on the Board of Trustees during the period and that during the history of your tenure at least, that no black has ever been appointed to IHL to serve out a remaining term of vacancy?

Is that not true?

A. That's true.

Q. And is it not true that only this year—this year meaning this school year, Your Honor, that the Board of Trustees Institution of Higher learning had a vacancy, and that a Caucasian female was appointed to that vacancy?

A. To the best of my recollection, that is true.

* * * * *

[1078] Is it not true that since your tenure as Executive Director and Secretary of IHL that no black person has been appointed president of a historically white university?

A. That is true.

Q. And is it not true that during your tenure as Executive Secretary that no white person has been appointed president to a historically black university?

A. That's true.

Q. All right. Is it not true that during the period of time of your tenure that no program has been transferred from [1079] a historically white university and gives to a historically black university?

A. That is not true.

Q. Okay.

A. The Board transferred to Alcorn State University the nursing program, which had previously been administered by the University of Southern Mississippi in the Natchez area.

* * * * *

[1080] I ask you again, according to your recollection right now today, without reviewing anything, is it not true that they have never transferred a course from a historically—master's or PhD's from historically black university—I mean, a historically white university to the historically black university?

A. Not that I can recall.

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[1133] **TESTIMONY OF E. E. THRASH**

Q. Dr. Thrash, isn't it true that Mississippi Delta Junior College had an ACT requirement of 12 for the programs qualifying one to transfer to an IHL institution?

[1134] A. It's my understanding that Delta Junior College does have an ACI admission requirement. I think it's 12?

* * * * *

Q. Is it not true that in the area of nursing at one discipline the ACT requirement for junior college is no different than the ACT requirement for senior colleges?

A. The Board of Trustees of the State Institutions of Higher Learning is responsible for all nursing programs, and the Board has established admission standards for all public nursing programs, and there is a requirement. I am of the opinion that junior colleges, in the large majority, do not have—even though they require ACT score for information, they do not use the ACT score for admission purposes.

* * * * *

[1173] Now, we must realize that due to the fact that the State legislation and the College Board have not allocated funds to Valley State the way it should be that Valley State is suffering a slow death.

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[4103] Q. Dr. Thrash, I show you what has been marked as Board Exhibit 344 and I ask you sir, are you familiar with this document?

A. Yes.

Q. What is it?

A. This document is a tabulation of the state appropriations for new construction at public universities from 1970 through 1980.

Q. By whom was this document prepared?

A. I prepared this document myself.

Q. And on what was it based, please, sir?

A. It's based upon the annual report of the appropriations for new construction supported by state appropriations.

Q. And are those Board reports maintained in the ordinary course of business?

A. Annual reports of the Board of Trustees' operations.

[4104] Q. Okay.

MR. STEPHENSON: Your Honor, we offer into evidence Board 344.

THE COURT: All right. Without objection, it will be received. (Exhibit Board 344 received into evidence.)

MR. STEPHENSON:

Q. Dr. Thrash, referring to Board 344, please, sir, do you see the bracketed data and the number thirty-nine percent in the upper right-hand corner?

A. Yes.

Q. Would you explain what that calculation represents, please, sir?

A. That thirty-nine percent represents that portion of the state appropriations for new construction of public universities going to the historically black institutions, Alcorn, Jackson State and Mississippi Valley.

Q. Dr. Thrash, are you familiar with the amount of state appropriations for new construction at public universities during the period 1981 through 1986?

A. Yes.

Q. Would you state for the record, please, sir, the sums appropriated for each institution.

A. Alcorn State University, five million three hundred and thirty-three thousand zero one two dollars; Jackson State University, six million eight hundred and sixty-three thousand seven hundred and fourteen dollars; Mississippi Valley, two million four hundred and twenty, three hundred and fifty-nine dollars, for a subtotal for the historically [4105] black institutions, fourteen million six hundred and seventeen dollars and eighty—thousand eighty-five dollars. That's—the subtotal is fifty-one percent of the overall total.

The historically white institutions, Delta State University, zero appropriations; Mississippi State University, zero appropriations; the University of Southern Mississippi, five million nine hundred and sixty-six thousand four hundred and thirteen dollars; the University of Mississippi,

eight million three hundred and forty-six thousand dollars for a subtotal—for a grand total of twenty-nine million nine two nine four ninety-eight.

Q. And did you state, sir, the percentage received by three predominantly black institutions over the period 1981-1986?

A. Fifty-one percent.

Q. We're addressing here, Dr. Thrash, state appropriations. Are there sources of funds in addition to state appropriations utilized by the institutions for new construction and repair and renovation?

A. Excuse me, Mr. Stephenson, I had my mind on an item that I needed to clarify in these appropriations. They did not include any appropriations going to the Veterinary Medicine School or the Mississippi University Medical School, so I wanted that to be understood. These are not imbedded in the figures of either of these documents.

Q. Okay. Thank you, sir. And now my question with respect to sources of funds utilized by the institutions for capital improvements: Are there sources of funds in addition to state appropriations which are utilized by the institutions for new construction and repair and [4106] renovation?

A. Yes.

Q. What are they, please, sir?

A. Self-generating funds. Those funds that institutions collect come from a variety of sources, but they are not state appropriations. And then on many of the construction projects at the campuses, we have authority to issue bonds and the bonds are paid off over the years by self-generating funds collected by the institutions.

* * * * *

[4115] Q. Would you agree with me that in terms of

constant dollars, dollars spent in the period 1950 to 1960 on construction would buy a lot more?

A. Possibly.

Q. Possibly or surely?

A. Fairly certainly.

Q. Now, with respect to—Well, do you know how much was spent on the veterinary medicine school?

A. Approximately thirty-five million.

Q. Built on what campus?

A. Mississippi State University.

* * * * *

[1229] **TESTIMONY OF DR. ROBERT YOUNG**

Q. Dr. Young, you stated that you were involved in continuing education. Is that involvement limited to those—Could you—First of all, could you define continuing education for us?

A. At Mississippi Valley State, continuing education is a life long learning program that seeks to provide various kinds of education opportunities for nontraditional students, students who are not able to attend the university on a regular basis.

We have credit course offerings and presently around seventy-five students enrolled in that area.

We have none—We have home study courses where people [1230] can take courses at home. I think the number this year for that was around a hundred—Somewhere—I am not sure of the number of people enrolled in that.

We have the University Center for Economic Development, which is funded by the United States Department of Commerce, and this particular program provides technical assistance to small land owners and also small business people in the ten county area of Mississippi Valley.

We have the United States Department of Education funded high school accoustic project, where we serve

about one hundred students who live on campus and some who are transferred to campus for their high school equivalency instruction to prepare them for the high school equivalency examination.

In addition to that, we have childhood development social programs, a program where we train Headstart personnel for teaching in the Headstart, and we provide a number of workshops, conferences, et cetera to the general public. That is generally the program.

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[1244] **TESTIMONY OF DR. ROBERT YOUNG**

Q All right. And did you have occasion to use the tools of the trade in terms of researching and consulting with various department heads and/or persons on the academic faculty at Mississippi Valley State University in preparing that document?

A. For the past two years we have had what we call the Committee on—Committee on Reform at Valley.

What we have been looking at was the past mission of the university and trying to project a mission for the future of Mississippi Valley that would be within the constraints of the mission as given to us by the Board of Trustees.

The documents that I presented in January of 1987, sort of summarized some of these concerns that we investigated. Some of the, more or less, the opinions of people who had been involved with Mississippi Valley State for some time.

Particularly, as concerns the question of the meaning of education that poor people have received in the Mississippi [1245] Delta.

What I attempted to address were the fact that, if you look at the history of the Delta, most of the residents of the Delta are black, most of them are descendents of former slaves, and print in the 50's, most of them had little

or no education, formal education whatsoever.

Mississippi Valley State was established in 1950, and for the first time we had a massive influx of in-service teachers and high school graduates to receive teacher education degrees, and a result of that, they returned to the newly established consolidated schools in the Mississippi Delta and many people, who had almost nowhere to go because they were being displaced in rapid numbers during that time by farm mechanization, they were given a basic education.

The reason why we address this issue, and I was particularly concerned, is because the past year when the—when the Board of Trustees of Higher Education submitted to the legislature recommendations to close Mississippi Valley, there was no concern whatsoever by the Board—and I have not seen yet in writing anything to talk about—the impact on Mississippi Valley State University.

And what this document shows is if Mississippi Valley State University had not been there, then three or four things would not have happened.

Number one, most of the black people in the Mississippi [1246] Delta would not receive—would not have received the basic education, because most of the teachers in the elementary and secondary education system are graduates of Mississippi Valley State University.

In addition to that, most of the administrators, most of the black administrators in those schools are also graduates of Mississippi Valley State University.

We looked at several documents to support this in terms of numbers in the Educational Reform Committee, but rather than deal with a number of statistics, I made just general statements, because the intention of the document was for the public, for general public consumption.

The second point was very crucial for me was in the second era, I subdivided the eras from 1960 through to the present time, Mississippi Valley State has had sort of a unique role in the State.

If you look at the Mississippi Delta, there were not many opportunities for poor people there, so the economy was pretty well sustained by social welfare agencies. Some of which were Headstart, the Community Action Agencies, the Welfare Department, the Food Stamp Programs and when you look at the workers in those areas, many of them were Mississippi Valley State University graduates.

As a matter of fact, if you look at the Headstart programs that serve the immediate five counties surrounding Mississippi [1247] Valley State University, what you will find is all of the programs, with the exception of one, were directed by Mississippi Valley State University graduates. Graduates sit on the Board of Directors for these programs. Most of the teachers were trained at Mississippi Valley State University, and this amounts to almost all of the early childhood education that is received by young people in the Mississippi Delta, black, black youngsters in the Mississippi Delta. There are few exceptions, such as, private day care programs.

So, the point I am trying to make is very crucial, not only for Ayers but anybody who is looking for higher education in Mississippi.

If you leave Mississippi Valley State out, and if they continue to limit the role like they just did in 1985 by reducing our programs, now, to seventeen, what is going to happen will be a number of poor people continuing to suffering—to suffer.

* * * * *

THE WITNESS: I can make the point very clear. If you

look at what is happening economically in the Delta, what [1248] we find is that many of the social welfare programs that are Government funded and many of the foundations that have poured money into the Mississippi Delta, they are withdrawing their support.

As a result of that, we would have a number of young people and elderly people who would not be receiving social kinds of benefits. So, we say that for the next few years, it would be crucial that Mississippi Valley State is given a more deserving role as far as economic development is concerned.

Somehow, somewhere people will have to find ways to make a living, and we, as a result of that, wrote the Government, United States Department of Congress to—to set up the University Center for Economic Development, and in that particular program, we are using that to redirect several of the departments at Mississippi Valley State to provide some kinds of technical assistance to business people and to farmers. All of that is within the restricted role of Mississippi Valley State University.

The last thing is in the area of education and some of the general liberal arts programs that we have. Now, that we have now. In 1985, we lost most of our education programs. I can be very specific on that.

In 1985, we lost the—all the secondary education programs that we had. That includes programs that prepare [1249] young people for science education, and the other secondary education programs.

We lost the business education program and that since then was reinstated, chemistry, gerontology, industrial arts, industrial education, office administration, which has since then been reinstated. Physics and in general these programs in the very—in the very recent past produce

teachers that crowded the halls of education throughout the Delta.

What is happening here now is that we only have elementary education undergraduate programs and physical education and music education. These are the only three programs that we can send young people into public schools. Our concern here is that there will be a teacher shortage in the very near future, unless we are given permission by the Board of Trustees to reinstate these programs, especially at the secondary level and to reinstate our Master's degree program in elementary education.

The role that we have had in the Mississippi Delta, which has been paramount, we will not be able to do that.

So, that was the final topic that was addressed in that particular paper.

Q. Okay. Now, Dr. Young, that is—you have said a lot, but let's be specific.

Now, you spoke about the role of Mississippi Valley State, but you did not define that role.

* * * * *

[1251] I will just ask him, do you recall the other roles the university played in those early years?

A. Well, there is one very important role, and that is in the later part of 50's, after the *Brown* decision, there were—there was a movement to try to register a number of black citizens.

Prior to that time, I guess back in Reconstruction, we had very few people registered to vote.

In main point—the main contention here was peoples ability to read and write. If you look at the impact on Mississippi Valley State, what you find is that the leaders in the voter education movement, especially these people who [1252] are helping in adult literacy in churches and

serious types of community organizations and adult education programs in the public schools, et cetera, these people, the leaders in these areas are teachers and what-not, and primarily Valley State graduates.

So, what I am saying here is one of the greatest fears – it is probably unfounded, but one of the greatest fears that exist about the Mississippi Delta and symbolized by the election of Michael Ethridge is that blacks will control the Delta politically in the very near future.

When you look at the blacks who have been elected in those various counties, many of them are valley State graduates. They were educated by Mississippi Valley State. They came through the public schools and they are taking on leadership positions.

Again, when you look – when you think about the roles of elected officials as far as Government or other people is concerned, then we have to go again back to the fact that this Mississippi Valley State has been very important in the development areas. I think that is the most important point.

* * * * *

Q. Doctor Stewart – withdraw that.

Dr. Young, could you tell us in your study, briefly tell [1253] Q. Could you, Dr. Young, give what the judge instructed?

A. The – when you look at the situation here in the Mississippi Delta now, unless there is some viable economic [1254] development opportunities set forth in a hurry, we are not going to be able to do very much for a lot of people.

So, what we – what we looked at recently at a conference – I think I can answer this question best in this way.

We looked – what we have been looking at recently is

[1254] the fact that Valley State now for the first time is in the position to impact the economic development of the area that they have never been before for several reasons.

One is that if we had looked at this area in 1950, there could be very little development as far as the private sector is concerned because there was very little formal education.

Secondly, as far as the interstructure is concerned, with help from the Federal Government and a number of other agencies in the 70's, we have a – we have good waste water, the kinds of facilities to have good water.

Recently, the legislators passed a bill to improve our highways.

So, what we are saying is that the only thing that is left now is the development of a technical labor pool.

In the past, we have not had the opportunity to impact the technical labor pool in the Delta, primarily because the roads that we have had, but for the future, we feel in working with Delta State and Alcorn State University, another regional area that serves a number of young people in their area, that we can impact economic development and the general [1255] quality of life in the area.

Primarily, by training young people and adults, number one, in basic literacy, and that is very crucial thing. Young people are dropping out of school much faster than they are graduating.

Number two, in the area of technical education. The most important thing that I saw that the Commission in the South recommended for the development in an area of what they called a technical labor pool.

Also, the general qualities of life. Well, we are able to do that because Mississippi Valley state has been working on the question of the quality of life since its very beginning.

As a matter of fact, that was our primary area. So we are talking about how do you solve problems such as teenage pregnancy, which has been exploded in the Delta now. How do you solve problems dealing with rampant crime?

If you look at the problems that we have had, prior to 1985, we have programs that can impact the general quality of life, and we have been able to do that very well.

If we can institute programs of technical education, where we train young people and older people in conflicts, problem solving abilities and also areas of computer literacy and other areas of technology, then we would ahve a very important role to play in the Delta.

Presently, that has been hampered because of the fact [1256] that the Board of Trustees for some reason did not see fit to allow us to return to the roiginal role, as far as our programs were concerned, even though a number of us have been talking about how we could do this without even additional money.

* * * * *

[1262] Q. Dr. Young, let me ask you this, then. During the period of your investigation, and you have testified as to ACT, have you made any study to come up with some correlation between ACT at Valley State and the ability of a student to graduate with achievement?

A. Yes, Dr. Boyer, President Boyer, was proposing two years ago to increase the ACT by the state from, I think at that [1263] time was from 10 to 15.

He circulated this proposal to the faculty and asked me to comment on it.

* * * * *

Q. Okay.

A. But it—what we decided to do was to—there were

five of us—five faculty persons who formed the group and requested of the Registrar to allow us to look at GPA, the [1264] grade point average, of students and correlate that with the ACT.

Now, the ACT that the students made when they entered Valley State. What we found out was that if you took—if you take a look at the grade point average of the students, and if you look at the ACT of the students, there was no correlation whatever of those two.

In other words, if you—if you were trying to make a policy where you would decide who could enter a university based upon a sole criteria as—such as ACT, based on the fact that the ACT was a good predictor of achievement, then you would find that Valley cannot sustain—that it has almost no relevance whatsoever.

We looked at other factors that come to be important, but we were not able to substantiate it because of the fact that they were sort of subjective things and very hard to measure.

As far as Valley State is concerned, and looking at that data, we—we wrote that report to the president and showed him that there was no correlation whatever between the ACT and the GPA, and if he sought to increase the ACT, he would drastically decrease enrollment, and there was just no cause for his argument about raising the ACT.

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[1298] **PROCEEDINGS**

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CROSS-EXAMINATION
BY MR. GOODMAN:

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[1303] BY MR. GOODMAN:

[1303] Q. As you understand it, did Dr. Boyer recommend to the Board of Trustees of the State Institutions of Higher Learning that it be increased from 10 to 13 at the university?

A. You mean—

Q. The ACT.

A. Resulting in the ACT that we have now?

Q. Yes.

A. I don't think so.

Q. You don't think so?

A. No.

Q. What position did you take on it?

A. Well, I did not take any position. I will tell you what happened with me with the ACT.

Like I said, I had told Dr. Boyer, the faculty, student body—I have been in so many positions at Valley, I was once the SGA sponsor for three years, and it was very clear. I had written documents, papers on how I felt about the ACT.

I had done various kinds of research, reviewed the Court [1304] dockets on the issue, and I had put in my writing my position on the ACT, so I just took it out of my mind.

To me it is not an issue no more, so how it came about this last time, I didn't really pay special attention to it. You know, especially with my own programs. Since like I said, in continuing education, my students are the nontraditional students, and there is a means by which you enter the university, if you are twenty-one or above, you can enter the university without going through the ACT route.

So, it has not been of a paramount issue to me, really. So, I'm really—I'm really not that sure about it.

Q. Do you recall the question?

[1312] Q. Okay.

* * * * *

Q. Do you remember when your deposition was taken in this case?

A. Yes, I remember it.

Q. Was it taken in Jackson?

A. Yes, that is right.

Q. Was it taken November the 13th, 1986?

A. That's correct.

Q. Okay.

A. I think so.

Q. And did Mr. Chambliss ask the questions at that deposition?

[1313] A. Right, right.

Q. I am referring to page 21. I want to refer you here, please, sir,beginning page 21, line 20, and ask you if I am reading from your answer correctly?

* * * * *

Q. "We met with the Faculty Senate, and Dr. Boyer denied that he had agreed with the Alumni Association that he would offer 31 degrees"?

A. Right, right.

Q. "I forthrightly called him a liar in the meeting"?

A. Yes.

Q. "And told him that I was not prepared to represent the Alumni Association in any kind of agreement, if he denied that he was to offer 31 degrees"?

A. Right.

Q. And then your lawyer said, "Well, Dr. Young," and you went on.

You said, "Let me just finish about this. This meeting—at this meeting, Dr. Boyer then said that he had met with us and agreed to 31 degrees. I spoke to the Faculty Senate about our concern, and before they reached a decision, they [1314] put me out of the meeting. And they met with Dr. Boya"?

A. Right.

Q. "And the next thing I heard, they had tactically agreed with him to support his plan of 17 degrees."

Was that your testimony?

A. Yes, right.

Q. All right.

A. That is true.

* * * * *

THE WITNESS: Let me correct that. I can easily explain that.

Now, the first thing is, if you read that deposition very carefully, you can see there were a lot of spots of 'er and 'era this and 'era that, this sort of thing.

And, you know, since Dr. Boyer has been at Valley State, he has tried to demote me four times, okay.

* * * * *

[1315] Q. All right. Dr. Young, during the spring of 1985, a number of people made a number of different proposals about how many programs there ought to be at Mississippi Valley, is that true?

There was a recommendation of one degree program made, isn't that true?

A. That's true.

Q. There was a recommendation of nine degree programs that was made, isn't that true?

A. That was Dr. Boyer's recommendation, yes.

Q. I thought it was Dr. Sharp, but you testified yesterday that somebody recommended nine programs at one time?

A. That was Dr. Boyer.

[1316] Q. All right. There was a recommendation of 31 degree programs, that was from you, wasn't it?

A. It was from our committee, right. It was the alumna—it was the Political Action Committee, the alumna,

and approved by the Executive Committee Alumna Association.

Q. And there was a recommendation of 17 degree programs from the President of the University to the Board of Trustees, isn't that true?

A. Yes. Well—yes. That's true.

* * * * *

[1377] **TESTIMONY OF GLORIA ROBINSON**

Q. Where were you employed before you began working at Lincoln University?

A. Before Lincoln I was here at the University of Mississippi.

Q. In what position?

A. My position was assistant director of student activities for minority affairs.

Q. What time frame was that?

A. From september of 1981 to June of 1982.

[1380] * * * * *

Q. Did you speak with black students on the campus at the University of Mississippi?

A. Yes, I did.

Q. Individually?

A. Individually and in groups.

Q. How frequently?

A. Every day. It was part of my job.

Q. And did you formulate any views of your own about the concerns about black students on the campus?

A. Yes.

Q. What were your views?

A. Well, just in visiting informally and in their organized groups, there were several major problems, one, of course, dealt with just the whole issue of organizing and developing their own groups, parlimentary procedures and

just how to get things done through the university system.

The second problem dealt with academics, where they were very concerned about, you know, their grades. Many of these students came to the University of Mississippi as A and B students, and for the first time they were getting C's and [1381] D's. That affected my position in terms of my work with them in student activities because many of them did not feel they had the time to devote to activities because they were entrenched in academic concerns.

And I think the third major concern was isolation, not only from, you know, the faculty and the student population but isolation in this environment.

Q. You referred to isolation. Did you come to understand that in more detail than you just expressed it?

A. Yes.

Q. Please explain.

A. When I speak of isolation, certainly at that time in 1981 there were about six hundred and fifty black students out of the about ten thousand and there were few black faculty so they felt isolated not only from—for being in a predominantly white environment but isolated from the faculty because they didn't understand, you know—they didn't have many relationships with faculty other than just the classroom environment. Because of their course load they were isolated from each other because they were scattered all over the campus in terms of departments. They were not concentrated in any particular area.

Q. Did you relate that to relationships with the faculty or to the academic concerns?

A. Well, certainly related to academics in that for some [1382] of the students provided—was a barrier to them studying, it was a barrier to them participating in various activities because there were—they were so few in number and did not feel involved in the university mainstream activities.

Q. Were there concerns about—expressed about grading or testing?

A. Well, like I said, many of the students came here as A and B students and they would study for what they thought would be required for the course and then they were graded—the test would be on areas that maybe they didn't study in. There was just a misunderstanding on their part in terms of how to interact at the University with their grading system and their testing system.

Q. Did you discuss the concern about academic issues with Dr. Jones, the director of the office of student activities?

A. Well, he was my immediate supervisor—

Q. Did you discuss it with him?

A. Yes.

Q. Approximately when?

A. Well, I came in September and it took me until about December to formulate some strategies for working with minority students, so I would say about December.

Q. Where did the discussion take place?

A. In his office.

Q. Was anyone else present?

[1384] A. No, just he and I.

Q. And what was said at that time?

A. Well, basically, I expressed my concern about the students not being able to participate in student activities because of their overwhelming concern about academic performance, grading systems and relationships with faculty. And I wanted his permission to establish some kind of liasion between student activities and academic departments.

Q. Did you express any purpose for that liaison?

A. Well, certainly, I felt it would help us retain black students and help us identify the problems that our

students were having with metriculation at the University of Mississippi.

Q. Did he respond?

A. Yes, he did.

Q. What was his response?

A. Basically he said academics was not our business, it was not our job.

Q. Did you communicate your concern to Dr. Beasley, the vice president for student affairs?

A. Yes, sir.

Q. Orally or in writing?

A. First, orally and then written.

Q. In terms of the oral communication when did that occur?

A. I would say around January of 1982.

Q. What was the occasion for that?

[1385] A. Well, he was hired the beginning of the year as the vice president for—I think Dean Moak retired and so they brought him in as a vice president, and as part of his orientation to our area we sat down and talked about what my job responsibilities were and what some of my concerns were.

Q. Who was present at that time?

A. Who was president?

Q. Present.

A. Oh, just Dr. Beasley and myself.

Q. What did you—what did you say? What was the discussion in terms of the concern about academic issues?

A. Well, my position as assistant director for student activities for minority affairs was perceived by me and the students as being a very important position and I felt that it needed to be—it needed to hve autonomy, that that position needed to have its own budget and that it needed to report directly to the vice president so it would have the

status and authority that it needed to assist black students. And so I talked to him about moving—retitling the position so that it fit under his office rather than just student activities, which I felt had a connotation of fun and games, and, you know, sororities, fraternities, that kind of thing. I wanted it to have more prestige, not only in the university structure but also in the eyes of the hierarchy of the university so that we would have more authority and more status [1386] with the academic community as welf.

Q. Did you say anything about what the title of your position would be?

A. I don't remember the title. It had something to do with director of student affairs, minority affairs.

Q. Did he respond?

A. Yes.

Q. What was his response?

A. He had just started working at the University so he felt he needed more time to evaluate the situation and he would get back to me.

Q. Now, you said you also communicated with him in writing, is that right?

A. Yes.

Q. And when did that occur?

A. Around April of 1982.

Q. And what did you communicate?

A. Well, then I put what I though was a modest plan for developing the office of minority affairs and I sent it to him in writing.

Q. And what, if any, response did you receive?

A. I really received no response to that request.

Q. Did you receive a written response?

A. No.

Q. Oral response?

[1387] A. No.

* * * * *

[1389] Q. When you just referred to the local newspaper, you meant the campus newspaper?

A. The "Daily Mississippian?

Q. Did there come a time when an issue of that newspaper was of particular concern to you?

A. Well, often.

Q. Yes or no?

A. Yes. Yes.

Q. When?

A. Well, often there were articles that were, you know, derogatory to black students, but I think the major issue that stands in my mind is the April Fools edition in 1982, April of 1982.

* * * * *

[1390] Q. Without testifying about the content of these articles, [1391] did you have a reaction to them as a black person in terms of your feelings?

A. Certainly, yes. Yes.

Q. What was your reaction?

MR. GOODMAN: To which we object. It's calling for a conclusion.

THE COURT: Overruled.

THE WITNESS:

A. My basic reaction was that "The Mississippian" was showing their insensitivity to black students and their needs. My basic reaction was that they were making fun of our not having representation on the cheerleader squad by showing that the least capable persons that would be eligible, the least eligible black students.

Q. You worked at the University of Mississippi less than a year?

A. Yes.

Q. Why did you leave?

A. I left out of frustration, stress, I left out of lack – what I call lack of support for the position that I had at the university.

Q. Did it relate to your view as to your power to do things?

A. In part, yes.

Q. Please explain.

A. Well, I had written Dr. Beasley in April, asking for [1392] a redefinition of the office of minority affairs. I asked that it be taken out of the student activities office, made a seperate office within student affairs that had liaison with academic departments. I asked for a separate budget for the office of minority affairs, to change the title of the position and basically asked him to give me the position so that I could effect some positive change in terms of not only activities but academic areas of the University.

After I did not hear from them during April, I submitted my resignation basically among the students. I saw most of the students that came to the University and my position was one where the students felt they could come to me to get things done for them and I certainly had no such authority. I had no power. I had no money to deal with those things.

* * * * *

[1393] CROSS EXAMINATION

BY MR. GOODMAN:

Q. I think your cheerleading objections caused come changes at the University, did they not?

A. Well, not my objections but the students' objection, yes.

Q. Did the cheerleading process become one of selec-

tion aFter the year that you describe?

A. I'm not sure. I left before—it was still an election process when I was here in 1982.

Q. Well, there have certainly been black cheerleaders at the University of Mississippi in the last several years, have there not?

A. Yes, sir, I think so.

* * * * *

[1394] Q. Well, tell me what your duties were to be when you came to the university.

A. My duties were to work with students activities. It was not just for minority affairs, but my primary responsibility was to work with student activities related to black students, to work with developing policy procedures for minority involvement to University activities, and to counsel students, counsel minority students.

Q. Was part of your job description to conduct work shops for minority students?

A. Yes, sir.

* * * * *

Q. Qualifications for membership in honorary groups, was that part of it?

A. Fraternities and sororities, yes, sir.

Q. Did you serve on the Chancellor's standing committee for black student concerns?

A. Yes, sir, I did.

Q. And you understood that when you went, did you not?

A. Well, I think it was organized after I got there, but [1395] I was asked to serve on it.

Q. During 1981-1982 when you were at the university was there a Miss Ebony Pageant?

A. Yes.

Q. Was that a participation for black students?

A. Yes, it was a pageant for black students.

Q. Was there a Gospel Extravaganza?

A. Yes, sir.

Q. And did black students have anything to do with that?

A. Yes, sir.

Q. Was there a forum particularly for the attraction of black students, that you recall?

A. Yes. We tried to develop as many as we could with budget limitations.

Q. Well, specifically what do you recall that you did develop that year?

A. One that stands out in my mind, we had a forum on black—well, male-female relationships. We had a successful transition program where we worked with white and black students to help black students get—to work themselves into the university more successfully. We had workshops on study skills as well as organizational development within the Panhellenic Council, which was the fraternity and sorority organizatioln.

Q. During that year was there a program celebrating the [1396] birthday of Dr. Martin Luther King, Jr.?

A. Yes, sir.

* * * * *

[1398] **TESTIMONY OF MARSHA RAY WILLIAMS**

THE WITNESS: Marsha Ray Williams, WILLIAMS.

BY MR. PRESSMAN:

Q. What is your address, please.

A. My address is the Department of Physics, Mathematics and Computer Science, 3500 Merritt Boulevard, Tennessee State University, Nashville, Tennessee, 37209-1561.

Q. What is your date of birth, please.

A. August 4th, 1948.
Q. Could you state your race for the record, please?
A. Black.
Q. And you indicated that your employment is at Tennessee State University?
A. Yes, it is.
Q. And your position is what?
A. Associate professor of computer science.
Q. Where did you attend high school?
A. Booker T. Washington High School, Memphis, Tennessee.
Q. What was the size of the graduating class when you were a senior?
A. Four hundred.
Q. What was your class rank?
A. Eighth.
[1399] Q. Where did you receive your undergraduate degree?
A. Beloit College, Beloit Wisconsin.
Q. What was the date and what degree and what was your major?
A. 1969. The degree was in physics.
Q. Do you hold a Master's degree?
A. Yes, I do.
Q. One or more?
A. Yes.
Q. As to the first one you received, what was the school and subject and the date?
A. University of Michigan, physics, 1971.
Q. Okay. And in terms of your second Master's degree?
A. 1976, systems and information science, Vanderbilt University.
Q. And do you hold a doctorate?

A. Yes, I do.
Q. Could you provide information about that?
A. The major is computer science from Vanderbilt University, 1962.
Q. Could you briefly outline your employment history starting in 1972?
A. From 1972 to 1974 I was a physics instructor and systems analyst at Memphis State University. In 1974 I returned to graduate school at Vanderbilt University in computer science. During that tenure I had a scholarship for tuition but worked [1400] part-time at the computer assistance instruction program at Fisk University.

I was at Vanderbilt until 1978, when I got—just after I got the Master's. I went to work for IBM as an associate systems engineer in Nashville, Tennessee from 1978 to 1980. In 1980 I returned to Vanderbilt to finish my doctorate in 1982 and worked during that time as an assistant to the dean of the graduate school on fellowships for minority students and as a teaching assistant in the department of computer science.

In 1982 I was working part-time at Tennessee State University in computer science, finished my degree and I stayed a year on faculty as associate professor of computer science at Tennessee State. From 1982 to 1983 I worked at Tennessee State.

In 1983 I came to the University of Mississippi as associate professor of computer science until 1984. In 1984 I returned to Nashville and assumed my position of associate professor of computer science where I am now.

* * * * *

[1401] Q. Were there any other terms?
A. That there would be an equipment grant related to my research being done at the University of Mississippi and a summer research grant in the summer of 1984 for my research at the University of Mississippi.

* * * * *

[1402] Q. Now, as the school year of 1983-84 progressed, did you receive notice of the details of your summer research position?

[1403] A. No, I did not.

Q. Did you make inquiry?

A. Yes, I did.

Q. Once or more than once?

A. More than once.

Q. Orally or in writing?

A. Orally.

Q. When was approximately the first time that you inquired?

A. In April of 1984.

Q. And whom did you contact?

A. The department chairperson, Dr. Raney Little.

Q. In person?

A. In person.

Q. Was anyone else present?

A. Typically the inquiries happen in the department office and there is usally a secretary there.

Q. In terms of the first contact, what was said?

A. I noted to him that it was getting close to the summer, that I had been promised a research grant for the summer, which he knew of, but I received no paperwork and no notification than that was in place, and I was on a nine-month contract and so that was my support for the summer and also my first opportunity to do full research for the summer, and I inquired as to why not and what needed to be done to get it.

Q. Did he reply?

[1404] A. He didn't know why that had not gone through, that he would check into it.

Q. Were your later inquiries also directed to Dr. Little?

A. Yes, they were.

Q. What did you say?

A. I continually asked, what's the status of the summer research grant. The office that was to handle that, to my understanding, ws the graduate dean, Dr. Joseph Sam. Eventually, Dr. Little told me that he learned that there was an application process to receive that grant, which I didn't know of, that should have been done in the fall, and apparently that was the point of contention of why it had not been given to me, although I had not been informed.

Q. You were referring to the fall of 1983?

A. Yes.

Q. Did you make a response when he referred to the application process?

A. Yes, I did, that I knew nothing of it, the process was never informed of it (sic), and my feeling was since it was promised as part of my coming to the university, that it was still due to me as a commitment from the University for the summer.

Q. Did he reply?

A. He checked further into it and eventually told me I needed to go – how did it happen? He kept checking on it, but there [1405] was never any conculsion as to whether or not I would be given the research grant for the summer.

Q. Did you complete the application?

A. Yes. After I finally realized it was getting into the summer and I still had no commitment for that research grant, I decided to write a letter to the vice chancellor of academic affairs noting the commitment in the beginning of my taking the offer to come to the University, to give me the research grant for the summer, and my feeling that it should be given to me even though I did not apply, which I did not know I had to do.

Q. Did there come a point when you inquired of another University of Mississippi official about the status of your research grant?

A. When I wrote the letter to Dr. Wagner.

Q. Did there come a time when you inquired of another official, yes or no?

A. Yes.

Q. What official?

A. Dr. Peter Wagner.

Q. What was his title?

A. Vice chancellor of academic affairs.

Q. How did you communicate to him?

A. In writing.

Q. What was the substance of your letter?

[1406] A. That that was a part of—the research grant for the summer was a part of the offer in my—that I accented to come to the University, that the application process was not made known to me, and that, as a result of that being a part of the offer, the University still should honor that commitment. It was not a large amount of money. I could not imagine a university of that size and reputation not honoring that commitment.

Q. What happened after that?

A. I was told to fill out the application form that should have been done before that I did not know about and the grant was made.

* * * * *

[1411] Q. Did you resign from the University?

A. Yes.

Q. When?

A. In August of 1984.

* * * * *

Q. Could you explain why you left?

A. Yes. After my difficulties in securing the summer research grant, and the research was a major reason why I came to the University of Mississippi from Tennessee State University, I began very early in the summer to start to question with my department chairperson, Dr. Raney Little, what my role would be in the coming year. And I still had [1412] very strong feelings, as he knew when he came, to do research, to keep myslef current and able to interplay between students and corporations and future research graduate programs for our students, and without that research and my continuing to publish and travel, that would not be possible. In my discussions with the department chairperson, the response was that as much had been done as could be done and if I wanted to pursue that possibility, particularly of research and also the continuing support activities that I did with black students and participate in the black faculty and staff organization I would need to pursue those on my own, with the dean of the engineering school and vice chancellor for academic affairs.

Based upon that, I did not see the kind of environment—supportive, positive, environment—in which I would do not only the things I had already started doing, but particularly get and keep my research going, which is the life blood of scientists.

Q. Did you observe a difference between what Dr. Little offered to do in terms of his own conduct at that time and at earlier times?

A. Yes.

Q. Yes or no?

A. Yes.

Q. What difference?

[1413] A. There was a stark change in terms of in the previous year when I was offered and came to the Univer-

sity. He and I, and I assume others, were involved in setting up the kind of environment and the support to do the kinds of things I did that year. When I sought to pursue that for the coming year, I was told to do that on my own.

Q. Did you see the other persons on your own?

A. No, I did not.

Q. Why not?

A. On the day we had a conversation, Dr. Raney Little, the dapartment chairperson, concerning my future and the kind of work I wanted to do from when I came to the University of Mississippi and beng told to do it on my own, I concluded that evern though I might do it on my own, I needed that supportive environment—everybody does—not only students, but faculty as well, to do those things and do them successfully within the framework of the department, and I concluded that that was no longer possible, and rather than stay in that type of environment, I chose to leave and I called him that night and told him so.

* * * * *

[1414] **TESTIMONY OF DR. THOMAS ERIC GREEN**

Q. You stated your name. Dr. Green, what is your age?

A. I'm forty-two years old.

Q. What is your race?

[1415] A. Black.

Q. Could you relate to us your educational background?

A. Well, I attended the public school system in Louisville, Kentucky. Let's see, elementary and junior high schools were black, all black, and I went to a recently integrated high school of thirty-five hundred students with sixty-seven black students there. That was a pre-college, pre-engineering sort of background. Went to undergraduate school at Cole College in Cedar Rapids, Iowa,

a predominantly white institution with a relatively small number of black students. When I arrived, I think there were eleven out of a little over a thousand students there. Did my Master's and my PhD at the University of Colorado, Boulder, an institution of about twenty-four thousand. At that time, it was probably two or three hundred black students, maybe twenty or thirty black graduate students.

Q. What area did you obtain your Master's in?

A. My Master's and PhD was in history. I also did a post-doctoral, a National Endowment for the Humanities Fellowship at Kent State University in history.

Q. Could you relate to us your employment history. Where was your first job and what position did you hold?

A. I actually began teaching as a teaching assistant at the University of Colorado while was working on the PhD. I left there after completion of my Master's and all the course work for the PhD. Went to the University of Louisville where [1416] I stayed for approximately five years. There I was the chairman of the Pan African Studies Program and also a member of the history department, teaching in both programs and adminsitering the Pan African Studies Program. I guess that would equate to black studies anywhere else.

Q. Okay.

A. From the University of Louisville I went back to the University of Colorado, wrote the dissertation for the PhD, and from there was contacted by the University of Mississippi, came here and worked for a year. From the University of Mississippi, I went to the University of Nebraska, worked there for two years in a similar field and I'm now at the Grambling State University in Louisiana. I've been there for three years.

* * * * *

[1417] Q. What year did you come to Ole Miss and what month?

A. I came in August of 1981. And that was approximately a month and a half, two months after I talked with Cleveland Donald. I also talked with the chairman of the history department because it was a joint arrangement between black studies and history at the time.

Q. When did you leave Ole Miss?

A. I left June 30th, 1982.

Q. What was the nature of the appointment?

A. I was acting chairperson of black studies and visiting assistnat professor in the history department.

* * * * *

[1418] Q. Did you present any new course outlines to this particular committee in the area of black studies?

A. I did during the fall of 1982 present for a special topic course that was called Sex and Racism in American, and that course I did offer in the spring of—no, it was the fall of 1981 that I presented the course to the committee so I offered it in the spring of 1982.

[1419] Q. How was that course received by your colleagues and by the University administration?

A. Well, on the surface of it I thought that it was just like any other course that I had seen presented to the committee in previous meetings, but I received a call from the fellow who had been my initial cntact with the University of Mississippi shortly after the course was approved by the curriculum committee and he told me in no uncertain terms that I was doing something that I shouldn't by offering a course on sex and racism, and he, in effect, told me that if I did not withdarw the course or if I didn't decline to teach the course, that there would be consequences.

I told him in no uncertain terms that I was going to run the program because I was in Oxford and he was in Washington and I didn't intend to be intimidated by him.

* * * * *

[1425] Q. You mentioned that you were—that there was some [1426] efforts to commemorate outstanding blacks. Who were the people?

A. Well, we did in November, I believe, a commemoration or a memorial for Roy Wilkins who had recently passed away. Roy Wilkins, I think, was head of the NAACP. He passed away. We did in the Southern Culture Institute a commemoration one afternoon and basically it was a ceremony that was participated in by the black population. There were some—I remember one to two administrators being thee and some people from the Southern Culture Institute there in the audience as we went through this process. The—it should not have been a controversial thing, but it seemed to me that—the thing that sticks in my mind is that the air was a little bit thick as the ceremony ended because of the civil rights fellow having been memorialized there, I suppose, or eulogized there. There was a prayer at the end of it by one of the faculty members that seemed to kind of have broken the ice after all of these speeches were made and so on.

After that, we had a talk with some of the people on campus about the fact that 1982 would be the 20th anniversary of the James Meredith activities or integration of the University of Mississippi. We talked with a number of administrators, a number of department chairmen, faculty members and so on and made a couple of efforts to set up a committee which would try to address the subject positively [1427] as opposed to being the subject of media scrutiny without any kind of preparation on the inside of the University.

Q. What was the response to your efforts in this regard?

A. Well, I was told by some people that as long as I didn't mention James Meredith's name I would probably get some cooperation, but that if I mentioned James meredith or I tried to bring James Meredith here to campus that it would be negatively received and I probably would not get any support at all from administration or from faculty members.

* * * * *

MR. OSBORNE:

Q. These people that you talked to about your efforts to commemorate Meredith's admission to Old Miss, were they faculty members?

A. One faculty member in particular, I believe her name was hawks, told me exactly what I just stated, that people would not be involved or not cooperate at all if James Meredith was involved in this at all. If we did something that had to do with commemorating the integration of the institution, I might get some help, but—I believe Dr. [1428] hawks is her name—said that people were still very angry about what James Meredith had done to the University.

* * * * *

Q. Did you receive any cooperation from fellow faculty members in your efforts to commemorate Meredith's admission to Old Miss?

A. During the first two to three month, little or no cooperation. By the spring of 1982, Dr. Lucius Williams and myself began to look to corporations and foundations for support and I believe it was after we received a ten thousand dollar grant from Rockefeller that we began to get some cooperation from the administration.

But at that point, the cooperation was based on a commemoration of integration of the University as opposed to James Meredith having been involved.

Q. Were you involved in any efforts to have department heads offer black studies courses in their particular departments?

A. When I came to the University one of the things that I attempted to do was to meet with the department heads outside the curriculum committee. I set up individual meetings with every department head in the college of liberal arts and [1429] on those occasions I talked with them about cooperative efforts to list courses that were germane to black studies that were also, for example, relevant in psychology or relevant in political science and so on. I also talked with them about—or about their plans for adding blacks to the staff or people to the staff, in general, who might be able to teach such courses.

Q. What were the response? What was the response?

A. One or two of the chairpeople were encouraging, but, for the most part, there was polite to negative response.

Q. Were you successful in getting any of the other department heads to offer black studies courses in their particular departments?

A. None in addition to those that were peripherally already on their books and peripherally associated with black studies.

Q. Did you feel it was necessary to have the support of the other department heads in order to make black studies successful at Old Miss?

A. Well, the basic thing was that black studies was one person while I was here and there was no way that one person could function without working one's fingers to the bone and teaching everything that they offered on the books, which was impossible. It was essential to have people who could handle the curriculum in the departments that were associated like [1430] political science or history

or English or psychology, and those people just were not here.

While I was here I taught history courses as well as black studies courses, each of those two terms, in an effort to try to offer as much as possible, but there was just so much I could do and still try to administer the program. So, yes, it was as I saw it, essential to have other departments cooperate to make black studies a success.

* * * * *

[1431] Q. Why did you leave the University of Mississippi?

A. I saw a lot of things here that did not sit well with me. I would like to have stayed because I saw a lot of potential. There was a fantastic student population, white and black student population. Some of the things that we were [1432] able to do here, Saturday activities and so on with students, I have not seen happen at other universities, so I was interested in staying here actually, but as the academic year moved along though there were some intimations that a second contract was going to be offered to me other than a visiting contract, no offers were made. I finally made the decision to go on and interview at other places and to look at what other options were available to me and held off until the end of May, I believe, before I accepted a job at the University of Nebraska, Omaha.

Shortly, thereafter, I was called in and offered a non-academic position at about seven thousand dollars higher than my salary was in the academic arena, but that was after I had already signed a contract and both the executive vice president and the fellow who offered me this position here at the University of Mississippi, which was the vice president for student affairs, knew I had already signed a contract with another university, and neither my integrity nor the legal system would allow me to void the contract and stay at the University of Mississippi.

Q. What month were you offered this contract?

A. I'm almost positive it was the middle of June. May have been June 15 exactly because it was only two weeks before my—the contract I was on was scheduled to run out, which would have been June 30th. It was right around the middle of June [1433] when I was made the offer.

Q. When are contracts normally offered at Ole Miss?

A. Well, searches take place throughout the year. There may be reason to search any time of the year but if you're trying to find someone for an academic position generally you try to get that search over with before January or February. If you're trying to find someone for a non-academic position, while you might struggle and search for a while and do something late into the spring or early in the summer, you also try to get those positions solidified before the spring is out. I'd say at the latest April.

* * * * *

Q. Did you, as part of your activities on campus, learn about the degree of participation by black students in campus activities?

A. As a result of being on the executive vice president's committee all of that information was—something was common

* * * * *

[1438] Q. Why were they going to storm the newspaper?

A. Because they objected to some of the articles that were in there. A homecoming issue in particular which depicted some negative images of—

* * * * *

Q. Complete your answer to that question and I have one other.

A. Students objected to a homecoming issue which had whites [1439] in black face and articles which made comments that we construed as racial in overtones or racist in overtones.

* * * * *

[1441] **CROSS EXAMINATION**

BY MR. RAY:

Q. Dr. Green, I'm William Ray. Did you mention you were involved in the efforts to employ a black faculty member in the department of political science?

A. I was asked to come to what amounted to part of his visit. In the process, you know, you bring a candidate to the campus and you have to meet with him, yes.

Q. Did you know that a member of the department wrote to Dr. Maurice Woodheart, the head of the American Political Science Association Committee of the Status of Blacks in the Profession to solicit names of potential black applications for the position?

A. What year was that?

Q. I believe it was 1981 or 1982. Which year were you there?

A. 1981-82. Fall of 1981. Is that what you're talking about?

Q. Yes, sir, I believe it is.

[1442] A. Go ahead.

Q. Were you aware of the letter?

A. No, I wasn't aware.

Q. Were you aware that other black educations were contacted concerning specific potential black candidates for that job?

A. The political science job?

Q. Yes, sir.

A. It seems to me that there was at least one more black person who was in the candidate pool, yes.

Q. And are you aware that at least three black applicants for the job applied as a result of these efforts specifically to find a black person to fill that position?

A. As I recall, there was at least one more person. I don't know what the number was but I remember meeting that person. There was one more person who was black.

* * * * *

[1443] Q. When you mentioned your belief that there weren't any elected students in student government had you forgotten that there was a least one black student on the campus senate throughout the time that you were at the University?

A. You have to raise the name in order to remember me to remember it.

Q. Was Johnny Parker on the senate when you were there?

A. I remember him.

Q. And he was an elected student government official?

A. Well, if I'm not mistaken, he was in the law school, though.

Q. He was on the campus senate, wasn't he?

A. That's separate from the undergrad. I'm not sure. He was in law school. He was not an undergrad student.

Q. And, in fact, they had law students on that campus senate and he was one of them?

A. I remember Johnny Parker there.

Q. And do you recall also that throughout your time at Old Miss there was always at least one black student serving an appointed campus – I mean cabinet position in the student government? Do you recall that?

A. The president of the SGA then did have liaison with black students on a regular basis.

[1445] THE COURT: All right. You may state in the record what you expect he would have said.

MR. OSBORNE: The witness as asked if he was a victim of any activities—of any harassment activities related to his race when he was employed at the University of Mississippi and if the witness would have been allowed to respond to that question, he would have stated that when he first arrived on campus he was walking through campus one day and a truck load of white students passed and called him a "nigger," that racial slurs were written on the bulletin board in the Afro American Studies Department were often torn off, and that during the time he was employed on campus he received harassment phone calls at least once or twice each week and that these phone calls contained racial slurs.

THE COURT: All right. That offer of proof will be in the record. Of course, the ruling of the Court is that this case is against the State of Mississippi and not individuals who might discriminate on account of race. Hope you have a nice trip, Dr. Green. We'll be in recess until nine o'clock.

* * * * *

[1495]

TESTIMONY OF CAROLYN WILLIAMS

THE WITNESS: My name is Carolyn Williams, WILLIAMS.

DIRECT EXAMINATION

MR. PRESSMAN:

Q. Would you state your address, please?

A. My address is Post Office Box 1940, Mississippi State, Mississippi 39762.

Q. Did you receive a subpoena to testify?

A. Yes, I did.

Q. Could you state your race for the record, please?

A. I am a black American.

Q. Could you state where you received your undergraduate college degree?

[1496] A. I received my undergraduate college degree at Mississippi Valley State University.

Q. In what year?

A. 1968.

Q. Do you hold a Master's degree?

A. I—yes, I do.

Q. Could you indicate where you received it and the year and the subject matter?

A. I received my Master's degree at Mississippi State University in 1973, in the area of secondary education with an emphasis in reading.

Q. Do you hold a doctorate?

A. Yes, I do.

Q. And where did you receive it and what year, and what was the subject matter?

A. I received my doctorate degree at Mississippi State University in 1975, in the area of secondary education with emphasis in educational psychology and reading.

Q. Would you please state your employment history after your graduation from Mississippi Valley State University?

A. After graduating from Mississippi Valley State University, I was first employed as an English teacher in the Aberdeen Public School System.

I taught there from the year 1968 until the year 1971. After which I became the Director of Reading Programs at Mary [1497] Holmes College in West Point, Mississippi, where I remained from West Point, Mississippi, where I remained from 1971 until 1973.

During the summer of 1973, I worked at Mississippi State University as a Co-Director of Reading Programs for Disadvantaged Freshmen.

From there, I worked and attended graduate school at Mississippi State from 1973 until 1975 as a teaching graduate assistant, and then as part-time instructor.

Between 1975 and 1978, I was employed as an assistant professor of curriculum and instruction at Mississippi State—that is curricula and instruction—from 1978 until 1972 (sic), I worked as an associate professor of curriculum and instruction at Mississippi State University in the department of curriculum and instruction.

Q. Did you say 1972 or 1982?

A. 1978 to 1982. From 1982 to present, I am a professor at Mississippi State University where I work in the department of curriculum and instruction.

* * * * *

[1501] **TESTIMONY OF CAROLYN WILLIAMS**

Q. Have you applied for an administrative position at the university?

A. Yes, I have.

Q. Once or more than once?

A. More than once.

Q. And in what year was the first time?

A. I applied for the first administrative position at Mississippi State in 1984.

Q. What position was it?

A. The position was Director of Faculty Development Center.

Q. Was that for the university or for a particular college?

A. It was for the university.

Q. How did you apply?

A. Through written application, letter, references.

Q. Was there a process to interview applicants?

A. Yes.

Q. Were you interviewed?

A. No.

Q. Was someone selected for the position?

[1502] A. Yes.

Q. Do you know the race of the person who was selected?

A. Yes.

Q. What was the race?

A. White.

Q. Did you subsequently apply for another administrative position?

A. Yes.

Q. What year?

A. In 1984.

Q. What position was that?

A. Assistant to the Department Head of Curriculum and Instruction. I am sorry, Assistant Department Head, curriculum and Instruction.

Q. And in what college?

A. The college of education.

Q. How did you apply?

A. Through written application.

Q. Okay.

A. Follow through with letters of references.

Q. Were you interviewed?

A. Yes.

Q. Were you selected for that position?

A. No.

Q. Do you know the race of the person who was selected?

[1503] A. Yes.

Q. What was the race?

A. White.

Q. Have you applied for an internship in the president's office?

A. Yes.

Q. In what year?

A. In 1986.

Q. What is the purpose of that type of internship?

A. The purpose of the internship for which I applied was to help regular full-time faculty members with rank of professor associate professor, develop leadership and administrative skills.

Q. Okay.

A. By participating in an internship in his office and assisting with administrative duties and observing the various operations of the university from that perspective.

Q. And was there any reason that that kind of experience would be considered of value?

A. Yes.

Q. What reason?

A. It would provide the opportunity for a regular faculty person to get training and/or professional development within the area of administration.

Q. Have you ever applied for an internship in a vice president's office at the university?

[1504] A. Yes, I have.

Q. In what year?

A. In 1987.

Q. And what month?

A. February.

Q. How did you apply?

A. Through letter of application.

Q. Were you interviewed?

A. No.

Q. Do you know the race of the person who was selected?

A. Yes.

Q. What was the race?

A. White.

Q. Going back to the position of the internship in the president's office, were you interviewed for that position?

A. Yes.

Q. Were you selected?

A. No.

Q. Do you know the race of the person who was selected?

A. Yes.

Q. What was it?

A. White.

Q. Okay. Have you subsequently applied for an internship in the president's office?

A. Yes.

[1505] Q. And when was that?

A. I applied for the position for second internship position—it was effective in 1987—March of 1987.

Q. How did you apply?

A. Through letter of application.

Q. Have you been interviewed?

A. Yes.

Q. When?

A. Monday of this week.

Q. All right. Have you learned the outcome of that process?

A. No. A decision has not been made on that internship.

* * * * *

[1508] Q. Doctor, I believe you said that you came to Mississippi State University from Mary Holmes.

By what medium did you come to Mississippi State?

[1509] A. I first attended Mississippi State as a

graduate student in 1968, working toward my master's as I taught.

Q. Isn't it a fact that you were recruited by Mississippi State?

A. Yes, sir, I was recruited into the department as an employee, but as a student, I applied and went on my own.

Q. Secondly, I believe you said that you were a full professor in the English Department?

A. Yes, sir.

Q. Are you tenured?

A. Yes, sir.

* * * * *

[1524] **TESTIMONY OF DR. WILLIAM S. FARMER**

Q. All right. Now, were you ever denied any promotions or did you ever apply for any positions that you did not get?

A. I have applied for several.

Q. What positions did you apply for?

A. I applied for associate dean in the college of education.

Q. And who received that position?

A. Dr. Forester.

Q. What is his race?

A. White.

Q. And what are his qualifications?

A. I know he has a doctorate. I think in vocational education, if I am not mistaken.

* * * * *

[1525] Q. Dr. Farmer, were there any other vacancies filled in your particular area since you have been employed at Mississippi State?

A. Yes.

Q. And can you give me the name of any of those positions?

A. No. The assistant dean for orientation.

[1526] Q. And when was that position filled?

A. About two years ago.

Q. Or who filled that position?

A. A white.

Q. Okay.

A. A white guy.

Q. What is his name?

A. Dr. Jim Abraham.

Q. Were you aware that the position was vacant before it was filled?

A. No, sir.

Q. When did you find out that there was a vacancy in the positon?

A. I did not find out until it was filled.

* * * * *

[1527] Q. Do you know anything about the work experience or the person who filled the position as assistant—well, was it assistant or associate?

A. Assistant dean.

Q. Assistant dean?

A. He worked as assistant director for college of schools relations, and he just recently got his doctorate from the University of Mississippi.

Q. And how long had he been employed by Mississippi State?

A. He was a student when I came there.

Q. Okay.

A. Inthe division of student affairs, so he had been there since I had been there but not as a professional employee.

[1528] Q. Now, at the time this position became vacant, how long had you been employed at Mississippi State?

A. About eight years.

Q. Eight years. Do you know the—was that an administrative position?

A. Yes.

Q. Do you have experience in the area covered by that position?

A. I think I have a lot of experience in that area in terms of student services and in terms of Director of special student services and working as Director of the Developmental Services, working as coordinator of Outreach Programs and development and working as assistant to the director of admissions, dealing with students, just about everything that I—

All four areas that I have worked in while I have at Mississippi State has been in the area of student services, student assistance.

Q. Have you had any experience in a position as dean or assistant dean?

A. I had experience as an intern dean at the University of Colorado.

Q. When was this?

A. In 1973, as part of my study.

Q. I don't know if I have asked you, but what is the race of the person who received that assistant dean position?

A. White.

* * * * *

[1531] **TESTIMONY OF DR. WILLIAM McHENRY**

Q. Do you hold—are you a member of the black faculty organization on campus of Mississippi State?

A. Yes. I currently serve as the chair of the Council of

Ministry affairs.

Q. What is the purpose of that organization?

A. The organization attempts to promote the welfare of blacks on M.S.U.'s campus, that includes recruiting, hiring, promotions and such.

Q. Is that faculty and students?

A. Faculty and staff.

* * * * *

[1532] Q. In your position as president, have you had an occasion to talk to any of the administrators at Mississippi State about concerns of your particular organization?

A. Yes.

Q. And who have you talked to?

A. We met with the president of the university annually and express our concerns to him on the progress of blacks on campus.

Q. Did you meet with the president of the Mississippi State in 1986?

A. Yes, we did.

Q. Did you express any concerns with him on the progress of blacks on campus?

[1533] A. Yes, we did.

Q. And what were the nature of these concerns?

A. The major concern was the lack of progress of blacks in moving into administrative positions. We were also concerned about the numbers of black in faculty positions on campus.

Q. Okay. Were these concerns presented to the president?

A. Yes, they were.

* * * * *

Q. Okay. Did you get a response to the list that you

presented to the president?

A. Yes.

Q. And what was the response?

A. The president met with us and we addressed the issues. The main concern, the representation in administrative position.

[1534] He informed us that there are three black administrators in upper level positions.

Q. Do you know those three people?

A. Yes. Dr. Ernestine Madison, assistant to vice president, Joel Harold, who is director for financial aid – associate director for financial aid, and the last name is Swede. I am not sure of her first name, but associate director of the placement center.

* * * * *

[1537] Q. Could you state for the Court whether or not – I mean the number of black department heads at Mississippi State?

A. Zero.

Q. Are there any deans?

A. Zero.

Q. Black deans at Mississippi State?

A. Zero.

Q. What about assistant deans?

A. To the best of my knowledge, none.

Q. Associate deans?

A. No, sir.

Q. Have you had conferences with the president or any other administrators about the lack of – about the absence of blacks in these particular positions?

A. Yes.

Q. And how – how many times have you met with the president ot brought this to his attention?

A. We meet annually with the president. We met with

Dr. McComb, and now we are meeting with the current president.

* * * * *

[1547] **TESTIMONY OF ERNESTINE MADISON**

Q. Is there something called an Administrative Counsel at Mississippi State University?

A. Yes.

[1548] Q. What is its role?

A. The administrative counsel advises the president and provide for programs, implementation of programs that would help to improve the University in general.

Q. Does it have any role regarding policies?

A. Yes, the development of policies.

Q. How many members does it have?

A. If I'm not mistaken, I believe we have ten.

Q. Is there an Executive Council?

A. Yes.

Q. Which body has ten members?

A. The Executive Council.

Q. Okay. How many does the administrative counsel have?

A. I'm sorry. It has thirty.

Q. How many black members are there?

A There are not any on either board.

Q Was there ever a black member?

A. We had one on the administrative counsel, Dr. Sabetha Jenkins Legget.

Q. She has left the University?

A. Yes.

Q. What is the role of the Executive Council?

A. The Executive Council is a small body made up of vice presidents and other persons that are in the administrative capacity. It's appointed by the president. And they are also [1549] to advise the president and help in

implementation of programs at the University.

Q. And it has ten members, you say?

A. Right.

Q. How many black members are there?

A. Not any.

Q. Is there an Academic Council?

A. Yes.

Q. What is its role?

A. Its role is to advise the president on academic matters, develop policies and also conduct the general business of the University related to academic affairs.

Q. How many members does it have?

A. We have twenty-six on that board.

Q. How many black members?

A. Not any.

Q. Is there a Graduate Council?

A. Yes, there is.

Q. What is the role of the Graduate Council?

A. The Graduate Council coordinates programs for the graduate school in general, implement programs and also take care of all administrative duties related to the graduate school and advises the deans and the vice president.

Q. How many members are there?

A. We have eighteen.

[1550] Q. And how many black members are there?

A. Not any.

* * * * *

[1628] **TESTIMONY OF DR. WILLIAM J. STEWART**

Q. Okay. You may testify as to the recruitment efforts from 19—during the period that you were over the College University division?

A. Now, on—at the implementation of the University College, the idea was to try and not only recruit a significant number of students with higher ACT scores but

also to try to increase the number of other race students.

In order to do that, I can testify to what happened firsthand when I had a responsibility in there.

You had the problem of the perception of quality of the programs and, of course, the number of programs that were available to students played major role in whether or not you were successful in recruiting other race student.

* * * * *

[1738] **TESTIMONY OF DR. SABETHA JENKINS-LEGGET**

Having been first duly sworn, was examined and testified as follows:

THE WITNESS: My name is Sabetha Jenkins Leggett, J E N K I N S, hyphen, L E G G E T

DIRECT EXAMINATION

BY MR. PRESSMAN:

Q. What is your address, please?

A. My address in 207 Bucktle Hall, University of Akron, Akron, Ohio.

Q. For the record, would you state your race, please?

A. Black.

Q. Where did you receive your elementary school education?

A. I received my elementary school education in Hinds County Public Schools.

Q. In terms of secondary education?

A. Also in Hinds County Public Schools.

Q. Do you hold a degree from one of the historically black colleges in Mississippi?

A. Yes.

Q. What degree, what college and what year did you obtain it?

A. I hope a Bachelor's degree from Jackson State, 1960.

Q. What was your major?

A. I majored in English and French.

Q. Do you hold a degree from one of the two smaller historically white institutions in Mississippi?

A. Yes.

Q. What institution?

A. I hold a Master's in—a Master's in English Education from Delta State. I earned that degree in 1970.

[1740] Q. Do you hold a degree from one of the larger historically white institutions in Mississippi?

A. Yes.

Q. Yes or no?

A. Yes.

A. What institution?

Q. Mississippi State University.

A. What was your degree in and what year did you obtain it?

A. I received a Doctorate Degree in Educational Administration in 1978.

Q. Over what periods in years did you work on that degree at Mississippi State University?

A. From 1975 through 1978.

Q. Turning to your employment history, do you have experience at the high school level?

A. Yes.

Q. In what years did you work at the high school level?

A. I worked in the high schools in the State of Mississippi from 1960 to 1966.

Q. In one school system or more than one?

A. In various school systems, in Hinds County as well as in Coahoma with Clarksdale City Schools.

Q. Were you a teacher?

A. Yes.

[1741] Q. What did you teach?

A. I taught English and French.

Q. Do you have teaching experience at the junior college level?

A. Yes.

Q. And in what period did you teach at the junior college level?

A. I taught from 1967 through 1975 on the junior college level.

Q. At what junior college?

A. At Coahoma Junior College.

Q. What did you teach?

A. I taught English.

Q. Did you attain a supervisory position while you were at Coahoma Junior College?

A. The last three years I was department head, department head for the English department.

Q. Where were you employed after Coahoma Junior Colllege?

A. At Mississippi Education Services Center, which is at Mississippi State University.

Q. In what period were you employed there?

A. From 1975 through 1978.

Q. What was your position there?

A. I was a field staff specialist and a state Title IX contact person.

[1742] Q. Okay. To what does Title IX refer?

A. Title IX is a federal law that mandates the equal treatment of persons on the basis of sex.

Q. Were your responsibilities there defined geographically?

A. Yes.

Q. Please explain.

A. As the State Title IX Contact Person, I served the entire State of Mississippi in terms of the hundred and fifty-two school districts.

Q. What proportion—did you visit any of the school districts during the period you had that assignment?

A. Yes.

Q. What proportion of the school districts did you visit?

A. Eighty percent. A rough estimate, eighty percent.

Q. To what levels of education does Title IX apply?

A. Title IX applies to all levels from elementary to secondary and post-secondary.

Q. All right. Could you provide a few examples of issues that arise under Title IX?

A. The issue of equal pay for both men and women with comparable job assignments, the issue of equal educational opportunity for all students, particularly in the athletic or the sports programs, the issues of promotion in the administrative ranks. Those are a few of thosde issues covered by Title IX.

[1743] Q. Please describe the kind of activities in which you engaged in that position.

A. My primary task was to interpret for school districts the Title IX mandates and then to assist these school districts in complying with that mandate, also to assist them in drawing up or developing a plan of compliance to meet the requirements of Title IX.

Q. Did you have contact with particular persons in school districts? Yes or no?

A. Yes.

Q. What categories of persons would you have contact with?

A. The counselors, the classroom teachers, the principals, as well as the superintendents.

Q. Did you participate in any conferences as part of that assignment?

A. Yes.

Q What kind of conferences?

A. For personal development, my own development, I attended conference in Atlanta and Washington. For the benefit of the school districts I developed and implemented conferences on both the local, the regional and the state level.

Q. This is in Mississippi?

A. Yes.

Q. You said on the state level?

A. Yes.

[1744] Q. Who would attend a conference on the state level?

A. Superintendents, counselors, Title IX local persons, classroom teachers.

Q. From which school districts?

A. From all school districts, all one hundred and fifty-two school districts.

Q. And how many conferences of that nature did you participate in in that assignment?

A. I would say from three to five.

Q. What was your next employment after that position?

A. In what period was that?

A. From 1978 through 1979.

Q. What were your duties in that period?

A. I was the Affirmative Action Officer, Institutional Research Person and Title III Coordinator.

Q. To what did Title III refer?

A. Title III is the program, is a federally funded program for small developing institutions with emphasis on administrative development, faculty development and student services.

Q. What did you do with respect to that aspect of your work?

A. Developed proposals, implement the programs, monitor established budget, hire personnel, et cetera.

Q. What was the level of the funding—the level of funding of the Title III program when you came to Coahoma Junior [1745] College?

A. Approximately five hundred thousand.

Q. Did you prepare a proposal during that year?

A. Yes.

Q. What funding did you seek?

A. I sought to double that amount to include some other programs that we did not have at the time.

Q. You referred to affirmative action in terms of your work at Coahoma and the second time that you worked there. What did you do in that area?

A. As affirmative action officer, I established and wrote the plan of compliance for the junior college. That's about it.

Q. Where were you next employed?

A. At Mississippi State University.

Q. In what position?

A. As Assistant to the Vice President and Director of Minority Affairs.

Q. How long did you hold that position?

A. From 1979 through July 1st, 1985.

Q. Could you briefly describe your duties in that position?

A. As Director of Minority Affairs my primary duties were to enhance the presence of blacks on campus, to provide programs for students, faculty; to create a positive image in the black community of Mississippi State University, et cetera.

[1746] Q. Okay. With that departments at Mississippi State University did you have contact in that position?

A. Departments?

Q. Yes.

A. All departments.

Q. What was your next position in terms of your employment?

A. My next position was Assistant to the President at Mississippi State.

Q. In what period did you hold that position?

A. From July 1st, 1985, through July 1st, 1986.

Q. And who was the president in that period?

A. The president was President Donald Zacharias.

Q. Did you receive any awards while you were at Mississippi State University?

A. Yes.

Q. Could you list the awards you received?

A. I received particularly the larger or the more significant award, one came from Mississippi University for Women where I was cited as the most outstanding woman in higher education in the state.

Q. In what year was that?

A. That was 1980. Another award that I considered significant was from another sorority which cited my achievements as an educator. I was also a member of the Team of Starkville Leadership where twenty leaders were selected [1747] to develop programs to identify problems and develop programs to correct those problems for our city.

Some of the other awards, the President of the University's Commission on the Status of Women recognized me as the most outstanding administrative and professional woman on campus in 1966. 1985, I'm sorry.

The Student Association on campus recognized me as outstanding leder, and I hve forgotten the year.

And just as I left the University in 1986, the black students on campus recognized me as the most outstanding administrator on campus.

Q. Did you participate in any community activities in Starkville and elsewhere in Mississippi while you were working at Mississippi State University, did you?

A. Yes.

Q. Could you explain?

A. Besides being community and civic and church leader in terms of making the round of Women's Day speeches and speaking to civil organizations, I did conduct two workshops for women in leadership development.

I did, as I said earlier, belong to Starkville Leadership, the first class. I worked with the Arts Alliance group. I worked with United Way and other community groups such as United Way, et cetera.

Q. Okay. Now, returning to your position of assistant to [1748] the president, how did you first learn of that position?

A. As assistant to the president?

Q. Yes.

A. The president who was – the president informed me, who, at that time, was Dr. Jim McComas.

Q. When?

A. In December, 1984.

Q. Did he describe the position to you?

A. Yes.

Q. And how was the position described?

A. Dr. McComas related that the primary responsibilities for that position would be to work with at least two vice presidents serving as a substitute often for him, to learn the structure, especially the financial structuré of the university. Experiences that I had not had a chance to get earlier in terms of the administration of an institution of higher education.

Q. Did he identify the vice presidents?

A. Yes.

Q. What vice presidents?

A. The Vice President for Academic Affairs and the Vice President for Business Affairs.

Q. Did he refer in his description to the Board of Trustees of Higher Learning? Did he?

A. Oh, yes.

[1749] Q. What did he say with regard to the Board of Trustees?

A. That I would – Dr. McComas said I would accompany him to meetings, to Board meetings as well as to Execu:ive Council, Administrative Council meetings.

Q. Did you ever – did you haVe a purpose in accepting the position?

A. Yes.

Q. What was your purpose?

A. At that time I felt that I did need the administrative experience from a university-wide point of view and perspoective, and so for personal and professional and personal growth, I accepted the position.

Q. Did there come a time when President McComas announced his departure from the University.

A. Yes.

Q. When was that?

A. I believe it was March, 1985.

Q. Was that before – let me begin again. What had you done with respect to the new position before that time?

A. With the new position?

Q. Yes.

A. I – immediately I began to accompany him to meetings such as the Board of Trustees of Institutions of Higher Education. I accompanied him to meetings of the Executive [1750] Council and Administrative Council and was –

Q. Of what body? The Executive [1750] Council and the Administrative Council of what body?

A. At Mississippi State University.

Q. Okay.

A. I had begun to study very, very carefu'ly a report that he had given me to study to become familiar with and that was the Millet report. In terms of the new position, the kinds of tasks that one would be assigned as an assistant to the president.

Q. When did you commence working in the new position full-time?

A. July, 1985.

Q. Had President McComas left at that point?

A. Yes.

Q. When did President Zacharias arrive?

A. August, 1985.

Q. Did you have occasion to discuss the position with President Zacharias upon his arrival?

A. Yes.

Q. When was that?

A. Within two or three days of his arrival, his first arrival to the campus after he accepted the position of the president, we talked.

Q. Where did that occur?

[1751] A. In his office.

Q. Who was present?

A. No one, just the two of us.

Q. And what was said at that time?

A. I told Dr. Zacharias the kinds of things I had been doing and the kind of expectations I had for that job in terms of hte professional and personal growth that I expected to get.

Q. What tasks were you assigned during the course of your service with President Zacharias in that position?

A. My primary responsibility was correspondence, and that is receiving, opening and addressing correspondence that went to the president; doing research for

speeches to organizations such as the Rotary Club, the Mississippi Cattlemen's Association or whatever organization that he was addressing that day; prepareing the outline. As I said earlier, doing the research for those speeches. And, later, becoming the person who would make sure that all props, procedures, persons were in place for an engagement that he attended. For example, if he was going to attend a dinner that night, then I would precede him by five or ten minutes to make sure that everything was in place.

Q. For whom?

A. For the president, and often for the president and his wife.

Q. Could you state what percentage of your work was allotted [1752] to answering his correspondence?

A. Yes. At least sixty percent of my day's work was spent in answering and responding to his correspondence.

Q. Did he have you attend the Board of Trustees meetings with him?

A. No.

Q. Or have contact with those two vice presidents?

A. No.

Q. Did he ever revise your draft responses?

A. Yes.

Q. How often?

A. Two, not more than three, times in the entire year.

Q. Did he ever comment on the quality of your work?

A Yes.

Q Once or more than once?

A. More than once.

Q. What did he say?

A. He was very pleased and often expressed it in a note to me. He was very pleased with my work.

THE COURT: Yes, sir.

MR. PRESSMAN: Yes, sir.
THE COURT: Okay.
MR. PRESSMAN: (Continuing)
[1753] Q. How did the actual content of your work for President Zacharias compare with what you had done in your previous assignment at Mississippi State University as Assistant to the Vice President for Minority Affairs?

A. As Assistant to the Vice President and Director of Minority Affairs, my responsibilities were to develop programs for, as I mentioned earlier, black students, especially retention of black students, to maintain a certain degree of visibility within the black community and within the entire University community, to work with department heads and other persons on campus to assure success for black students. And so there was much more substance to the kind of work that I did, whereas as Assistant to the President under Dr. Zacharias' administration, there was no challenge, no substance, and I classified the work as very menial tasks as compared to those that I previously had done.

Q. At the time you were elevated to the position of assistant by President McComas, was another MSU employee also made Assistant to the President?

A. Yes.

Q. What was the race of that person?

A. White.

Q. What position did that person have at the time the person was elevated?

A. That person was Assistant to the President and Associate [1754] to the Vice President for Business Affairs.

Q. Did the person retain that position along with being Assistant to the President?

A. Yes.

Q. Were you able to compare the assignments this person received from President Zacharias with the assignments you received?

A. Yes.

Q. How did they compare?

A. The assignments that that person received were much more challenging, had much more meaning and impact on policies, practices at the Universit6, whereas mine did not.

Q. Did there come a time when you discussed your dissatisfaction with President Zacharias?

A. Yes.

Q. Once or more than once?

A. More than once.

Q. When was the first time?

A. Approximately two months after he arrived.

Q. Where did that discussion take place?

A. I can't remember exactly where it took place.

Q. Could you state what was said?

A. At that point, it was—I said casually that I looked forward to assuming greater responsibilities on his administrative team.

[175[illegible]] Q. Did he reply?

A. Yes.

Q. What was his reply?

A I don't remember because it was not significant at that time. There was no sense of commitment.

Q. When did you subsequently communicate your dissatisfaction? At what point in time?

A. In June.

Q. Of what year?

A. June, 1986.

Q. Was there one discussion then or more than one?

A. More than one.

Q. How many discussion were there?
A. Three.
Q. Where did they take place?
A. In his office.
Q. Was anyone else present?
A. No.
Q. What day of the week was the first time?
A. On a Friday.
Q. And what was said at that time?
A. I said to President Zacharias that I was displeased with the responsibilities of doing correspondence and the other, what I called, menial tasks. And he said to me that to let him think about it and to let's talk again on Monday. [1756] In other words, he would think about it on the weekend and we would talk again that Monday.
Q. And did you meet with him on the following Monday?
A. Yes.
Q. What said at that time?
A. Again ddressed the issue, that I expected much more, much more challenging experiences from my work. And I can't remember his reply because, again, there was nothing said that suggested that things would change.
Q. Did you have a later conversation with him relating to this issue?
A. Yes.
Q. And when was that?
A. That Wednesday.
Q. And what was said at that time?
A. I informed President Zacharias that I was leaving the university to accept another position.
Q. Was there anything else said?
A. Yes. He asked me where and what kind of position and I told him that I was going, where I was going.

Q. What did you say to him?
A. I told him that I was going to the University of Akron and that the position there would be Assistant to the President and Director of Minority Affairs. And he said to me that he thought that was a demotion and how much—how [1757] much of a demotion—in essence to—well, how much of a demotion it would be, that at Mississippi State University I had—I was not relegated to Director of Minority Affairs, I was his assistant and so I had the global freedom there at the University.

I also, though, said to him that at the University of Akron, I would have personnel. In other words, I would have a staff of nine persons, professionals to work with, and I would be on the president's cabinet. And he said to me concerning being on the president's cabinet at the University of Akron that that was not any different from my being a part of the Executive Council at Mississippi State University.

I disagreed with him because as a member of the president's cabinet at the University of Akron, I would have impact on policy practices, et cetera, whereas as at Mississippi State University my duties were relegated to that of taking notes for him.

Q. Did you vote at the Executive Council at the University?
A. At Mississippi State?
Q. At Mississippi State.
A. No, I had absolutely no voice on that council. My responsibility was to take notes for the president.
Q. Were you like the recording secretary?
A. Yes, I called myself a—a recording—a correspondence [1758] secretary, as well.
Q. On what day did you accept the position at the University of Akron?

A. I accepted that position that Wednesday.

Q. Did you regard that change as a demotion?

A. No.

Q. Why not?

A. Again, I felt that that position would offer me those opportunities that I had asked Mississippi State University to offer me in terms of professional growth. Again, to be able to manage my budget, to be able to work with personnel or personnel staff of that sixe, to be able to be a part of a cabinet where I could identify problems and translate those problems on the cabinet. In other words, to be a part of, you might call it, the "thank tank," the planning group, the administrative team certainly was not a demotion as notekeeper.

Q. How many black administrators were there at Mississippi State University in the period when you were assistant to President Zacharias?

A. In July—on July 1st, 1985, Dr. Ernestine Madison joined me, which would make a total of one—one other person besides me.

Q. Two in total?

A. When you include Dr. Madison and me, that was a total of two.

[1759] Q. Okay. What is the size of the budget that you direct at the University of Akron?

A. The current budget is two hundred and four thousand dollars.

Q. Does that include the personnel budget?

A. No.

MR. NOBLE: Your Honor, this is irrelevant. Objection.

THE COURT: What do you contend is the relevancy of this, Counsel?

MR. PRESSMAN: I think it shows the qualifications of the witness who was not retained at Mississippi State University.

THE COURT: You may proceed along that line. Without drawing any conclusion, you may answer the quetion. Two hundred and four thousand.

* * * * *

[1826] **TESTIMONY OF DR. ASA HILLIARD**

Q. All right. What information does ACT use when they are predicting grades?

A. What information does ACT use when they are predicting grades?

Q. Yes.

A. Previous grades from high school, and they use ACT scores.

Q. How many grades from high school?

A. Four grades from high school.

[1827] Q. And how many scores?

A. Four scores on the test—The four grades and the four scores together make the prediction equation.

Q. Do they use the composite score?

A They don't use the composite score at all.

* * * * *

[1848] Q. In terms of proportions, which racial group would tend to benefit more from the broder high risk definition?

A. A broader high risk definition would be more beneficial to the black students because of their position in—Where they cluster on the ACT scale of achievement.

Q. Could you explain that a little bit more?

A. Because they tend to have lower scores, their mean is lower and the group as a whole is lower on score of the ACT, [1849] so they would be closer to the bottom.

* * * * *

MR. PRESSMAN:

Q. Dr. Hilliard, with respect to Board Exhibit 183, the admissions standards, you testified that at page 9, it indicates that four of the historically white institutions had a minimum of a 15 composite score on the ACT.

Do you have information on the percentage of black graduates in Mississippi who took the ACT in 1985/86 who scored 15 or higher?

Do you have that information?

A. Yes, I do.

Q. On what document does that appear?

A. It appears on Plaintiff's Exhibit 295, (j).

Q. Did you have to do any calculation to get that or does it just appear there?

A. To get the numbers, the—Well, to get the ones that have 15 or higher, I just added from the cut point.

Q. Okay. And what was the percentage of the black students who had 15 or higher?

A. About thirty percent.

[1850 Q. All right. Do you have information for the same year on the percentage of white high school graduates who took the ACT who scored 15 or higher?

A. Yes.

Q. On what document is that?

A. It is on Plaintiff's Exhibit 295, (i).

Q. And what was that percentage for the white graduate?

A. That percentage is seventy-two—About seventy-two plus, seventy-two point two or something like that.

Q. So in terms of—Of each ten white high school graduates, about what number were 15 or higher?

A. About seven.

Q. And for each ten black high school graduates?

A. About one and a half.

Q. Okay.

A. About one and a half.

Q. What was the percentage of—What was the percentage of the black high school graduates of 15 or higher?

A. The percentage of the black high school graduates for 15 or higher was thirty percent—I am sorry, three.

Q. Three out of ten?

A. Right, three out of ten. Seven out of ten for the white.

THE COURT: High school?

THE WITNESS: Yes, sir.

[1851] MR. PRESSMAN:

Q. Would this be students completing high school in 1985/86?

A. 1985/86.

Q. Who took the ACT?

A. Right.

Q. Did you calculate how many times the white percentage about that—15 or above exceeded the black percentage of 15 or above?

A. It is about two and a half times higher.

Q. Doctor, do you have information on how grades obtained in high school, grade point average, by the black and white graduates who took the ACT in 1985/86 compared?

A. Well, if you—

Q. Do you have such information?

A. Yes, I do.

Q. On which exhibits is that?

A. On, for blacks it is on P-295 (j), for whites P-295 (i).

Q. What proportion of white students had a three point zero average or better?

A Let's see. Three point zero or better for white

students on the first page, if you combine the column between the—The two columns between three point zero and—it comes out to about forty-three point eight percent.

[1852] Q. And what proportion of black high school graduates had a three point zero or better?

A. Doing the same thing on the P-295 (j), you get about thirty point five percent or better for blacks.

Q. Did you calculate by how many times the proportion for white graduates at the three point zero or better exceeded the proportion of the black high school graduates at three point zero or better?

A. It is about one point two six.

Q. Could you—could you check and see what you just said was in terms of three point zero or better?

A. In terms of three point zero or better?

Q. Yes.

A. Yes. It is forty-three percent compared to thirty percent.

Q. And the percentage by which the white proportion exceeded the black at that level was what?

A. I would have to divide again. —You want me to calculate it again?

Maybe I made a mistake.

Q. Did you also calculate it to two point five or better?

Is that the figure that you just gave me?

A. No, the figure that I gave you was three point zero or better for whites—under three point zero to three point four for whites is twenty-seven point eight, and [1853] three point five to four point zero is sixteen, so it is a total of forty-three point eight.

Q. But the calculation you said was one point two six?

A. You asked me for the relationship between the black and whites—That's what I said I would have to—the

whites are about one and a quarter times greater in GPA than blacks.

Q. So what number did you get?

A. About one and a quarter times, one point two six.

Q. How did that compare with what you gave in terms of test scores where—

A. Well, lesser—

Q Excuse me. Where we are talking about students who achieved 15 or higher?

A. In terms of test scores, there is a greater disparity. In terms of the grades, less disparity.

Q. All right. Referring to those—The same two exhibits, did you calculate what proportion of each racial group had a grade point average of two point five or better?

A. Of two point five or better?

Q. Yes.

A. No, I don't have that.

Q. Okay.

A. Oh, wait. Let's see. No, I did not do it. I had a note to do it, but I did not.

[1854] Q. In terms of what you did calculate, about three point zero or better and the test scores, the difference in the—

A. Oh, yes, I did. Whites for two point five or better, I got sixty-two point two percent.

Q. Okay. What about black students?

A. For black, two point five or better, I got forty-nine point two percent.

Q. And by what measure did the percentage of the black students exceed the percentage of the whites—

A. I am sorry. The percentage of white students exceed the percentage of black students?

A. About one and a quarter.

Q. Okay. In terms of what you have said about the comparison of test scores with grades, would this have any implication in terms of using grade point average instead of test scores or with test scores in admission decisions?

* * * * *

[1855] THE WITNESS: The difference would be that by giving—Given the fact that the—That blacks do better on grades and given the fact that we know that—Well, just given that fact, if you had a way of equating, giving equal weight to grades and to test scores, it would increase the number of blacks that would be selected, if you had a way of doing that.

Q. By the way, does ACT take a position on which is the better predictor, assuming you just used on predictor, grades or test scores—grades or test scores, do they take a position?

A. They do and others do.

Q. And what is the position?

A. The position is that the stronger predictor of high school—From high school grades of freshman year performance in college in almost—In every study that I have seen is that grades are superior.

Q. In terms of—

A. To aptitude test scores like ACT or SAT.

Q. In terms of ACT's data, is it a whole lot better?

A. Well, it would be—

* * * * *

[1856] MR. PRESSMAN:

Q. Does ACT in its publications discuss which is better?

A. They do.

Q. And you gave an answer that they took the position that grades—If you used one, grades alone—

A. That grdes are slightly better than test scores.

* * * * *

[1860] Q. Referring again to Board 183 and the sections which you have discussed on minimum ACT scores, do you have an opinion as to whether or not these provisions are consistent with the standards for use of ACT test scores which ACT sets out in its materials?

Do you have an opinion?

[1861] A. Yes, I do.

Q. What is your opinion?

* * * * *

Q. So you are asked now to give your opinion, Doctor.

A. Okay. Well, based on—I believe they are inconsistent [1862] with the stated policies of and recommendations of ACT.

Q. What document do you have there?

A. I am looking right now at P-292.

Q. What page?

A. And it will be Page 4. It says, for its part, ACT believes that all students who can succeed in college should have a fair chance in selection.

Therefore, ACT recommends that all students be selected with appropriate attention given to qualifications, in addition to test scores.

Q. Okay.

A. A report—

Q. Is there another document that is pertinent?

A. Again, I refer to the issuegram, 186. That is Board Document 186.

On Page 6, ACT tests are but one element in a data base that include information about a student's background, interests, plans, accomplishments and needs for various

types of assistance. This information is useful not only in admission but also follow-up.

Second, ACT test measures academic competency developed by the students through their past educational experience. The scores should, therefore, be interpreted in view of previous educational opportunities and conditions.

Then, ACT tests assesses a student's current educational [1863] development but are not intended to measure either innate aptitudes or the capacity to acquire the academic skills stressed in the test through subsequent intervention, and, finally, ACT data should be used along with other information about students, for example, personal qualities. The type of additional information that is of value is dependent upon the types of uses being made of the test.

The last on Page 7—

Q. What paragraph on Page 7?

A. The second paragraph.

Q. Did you read that before?

A. Yes, I did.

Q. Okay.

A. Do I need to read it again?

Q. No. Is there another document that is pertinent?

A. The Statement of Policies, which is Plaintiff's Document 1—I am sorry, Board document 163.

That is Page 5 and 6. Especially 1-C and then 2-C.

1-C says, ACT test score data should not be used as the sole criterion for admission selection decisions. ACT encourages colleges to consider other measures of academic ability. Specifically, high school grades or the in class, as well as noncognitive factors, such as, interests, special skills, abilities in the admission and selection decision.

Then it also says, colleges should provide students [1864] with a general description of the selection procedures they employ. Those procedures should include consideration of many aspects of the student's capabilities,

experiences, including achievement or ability factors, relevant experiences and noncognitive factors.

Q. Doctor, are you familiar with a report entitled Ability Testing: Uses, Consequences and Controversies?

A. Yes, I am.

Q. Do you have that with you?

A. Yes, I do.

Q. Who prepared that report?

A. As with the previous report, placing children in special education, this is prepared by a panel of the National Academy of Sciences, a blue ribbon group, that was convened to make recommendations and a state of the art statement about standardized testing.

Q. Is—Is this considered to be the reliable authority in your field?

A. Yes, it is. It includes many of the top people in the field of testing.

Q. Does this report address the use of test scores in admissions?

A. Yes, it does.

* * * * *

[1867] THE WITNESS: This comes from page 196 of the document Ability Testing: Uses, Consequences and Controversies. It is the report of the panel convened by the National Academy of Sciences. There is nothing in psychometric theory to encourage a strict and mechanical application of any ranking principle. Test scores are admittedly statements of probability, not of fact. They seek to measure a relatively narrow, if also important, range of cognitive skills, and they predict against a limited, if also very useful, criterion, usually first year grades, hence, while they can provide important information about an applicant's probability of success, there is no reason when there are many applicants capable of succeeding for test

scores to dominate a decision process.

As the Carnegie Council on Policy Studies in Higher Education commented a few years ago, using numerical predictors to make fine distinctions can look attractive to admission officers, but it is a misuse of tests.

Even recognizing the inherent difficulties, we believe that admissions officers have to exercise judgment on case by case, as, in fact, many now do.

The goal should be to affect a delicate balance among [1868] the principles of selecting applicants who are likely to succeed in the program, of recognizing excellence and of increasing the presence of identifiable under-represented sub-populations.

Q. Okay. Doctor, in your opinion, is the use made of the ACT composite score in the admissions standard in accordance with reasonable professional standards of testing?

A. I do not believe so.

Q. Do you have one reason for that or more than one?

A. I have really one general reason for it. It has to do—Should I?

Q. Go ahead.

A. It has to do with the general recognized principle which you hear every where, and that is that there should be multiple criteria in making decisions and not one.

Q. Okay. Do you have more specific or other reasons? Yes or no?

A. Well, there is one other reason that you make—In my opinion, you make fewer mistakes in rejecting able—applicants who are able to complete a college program.

Q. Okay.

A. And the fact that there are two kinds of applicants where we make those kind of mistakes.

One, we make a mistake because there are many applicants who score below a cut minimum who are capable, without any [1869] additional help, of completing a college program.

Secondly, there are applicants who, with additional help, reasonable additional help couldd also complete a college program.

So, in order not to make both of those mistakes, especially when the consequences fall so heavily on any particular group, it seems to me that it is important to utilize multiple criterion.

Q. All right. Do you have a lengthier list of reasons?

A. A lengthier list of reasons?

Q. Yes.

A. As far as the—Well, yes.

Q. What is your first one?

A. In my opinion, the use of the cut scores—and this is a restatement, it is not consistent with the ACT literature.

Q. Have you already discussed that?

A. I have already discussed that.

Q. All right. What is next?

A. In my opinion, the technical literature that is provided—that was provided to me about the instruments that have been used, does not contain systematic studies demonstrating the use of ACT for individual decision making.

Q Okay. What do you mean by technical literature?

A. Well, in any widely used test, the standards require [1870] and the testmakers do provide a manual to explain things about the test, including things bout how the test was scientifically validated, and if there are studies of the use of the test, those studies will be reported or at least a representative sampling of them will be reported in the technical literature, and so you would look for that in the

case of the use of any text.

It seems that the technical literature on—some of it on the ACT and—But not for the individual deicision making that is—that this test is being used for with cut scores in the Mississippi system.

I have not seen technical data on, for exampe, what would happen if alternate criteria were used; what would happen in terms of the—Both the selection of students and their progress through the institution?

The systematic studies that should be available there are not.

Q. All right.

A. Well—

Q. What do you mean by individual decision making?

A. What I mean by individual decision making is, for example, if you use cut scores on a test, the test is really making the decision about admission or non-admission, and you are making that for groups of people who score at a certain level.

[1871] So, for example, all students who earn fifteen will be admitted, all students who earn—Except with the exception of exceptions, all students who earn less than 15, if that were the cut score, would be rejected, except for that—I forget the name of the—The terminology that is used applied to the exceptions.

There are some limited exceptions that we have talked about so far. So, that would be the—That would be—The individual decision making, however would, mean to me that you would utilize these sources of information that the ACT recommends and that others recommend that are normally a part of the decision making process for admissions or at least I have not seen evidence that they are in Mississippi.

Q. Under the Board's standards, are decisions made about individuals who apply?

A. Well, decisions—

Q. Are they?

A. Under the Board's standards?

Q. Yes.

A. In my opinion, it is made as a group. The decisions are made for them as a group. Group membership in the score category.

Q. With reference to the other data to which ACT refers?

A. Not—No, I have seen no evidence that the other data [1872] are utilized.

Q. Do you have a U.S. Exhibit 900 there?

A. Yes, I do.

Q. Does this contain information pertinent to the opinion that you have expressed?

A. Well, it gives an excellent set of examples of the fact that able students—Excuse me, would be able to perform at different institutions. The very first one is the ACT composite score. The students are ranked by those, and then we look at their actual performance in 1981/82 at the University of Mississippi.

Q. Is this 900 (a)?

A. This would be 900 (a).

Q. Okay.

A. And if you just take a look at a couple of these, like look at the cut score of 15 that was being used at that time, and just below that, you have eighteen students who were admitted and who earned grade point averages of two or greater. While twenty-four, who were at that same score earned less than.

Bu if you drop down to 13, what you get is almost a fifty, fifty split. You get thirteen students who had a 13

who got two point zero or better, and you had fourteen students who got less. Then you have almost the same fifty/fifty split of eleven students who got a 12, who got [1873] two point zero or better, and then you got eleven students who got a 12 and who got less than two point zero.

By the way, if you go above the line, you will see at a score of 16, for example, you have almost the same fifty/fifty split of sixty-three students who got a 16 that got two point zero or better, and sixty-four students that got a 16 than got less than two point zero.

You almost get the same thing at a score of 17. Fifty-nine students had a score of 17 got a two point zero or better and sixty-two students got a two point zero or less, almost no difference.

Q. Well, how does this relate to your opinion?

A. Well, it indicates especially that the student who fell below the cut score, that there were able students who were admitted, did perform in a satisfactory manner in that institution, so that applies to the group that could have gotten in performing without any additional help, so there would be some students who fall below the line who are fully able, who would not have been picked by their ACT tests scores alone, but who could have been picked by other criteria.

One example that I mentioned of other criteria earlier was grades, because we know the distributioln of grades, there is less disparity between the grades of white students and blacks, so if you had combined the grades and the test [1874] scores, the probability is that we would have picked up an additional group of black students.

* * * * *

Q. What does that – What did – What does it show as – What does it show in terms of the proportion at the

score of 14 above and below two point zero?

A. Well, at that particular score, it shows that more of those who earned 14 got less than two point zero than earned two point zero or higher.

Q. Then how is this relevant to your opinion?

A. Well, I indicated that certain other score levels, it is fifty/fifty, but even at that, even at the – given the fact that you had – Let's take 14. You had eighteen students that were greater than two point zero, who earned two point [1875] zero or higher.

You had twenty-four, however, that earned less. The question is that – the point is that of the eighteen who were satisfactory, a cut score would have eliminated them, unless they were able to come in under the exceptions rule.

Q. What is used in terms of predicting success in the Board's standards that you have testified about?

A. Well, of course, the Board's standard used only the composite score in making their predictions, and that is – That is different than the – Than what the ACT does. It uses al four of the sub-test scores.

Q. Anything else?

A. Beg your pardon?

Q. Anything else?

A. They use grades.

Q. Okay.

A. They have the capacity to use grades for making predictions. They use grades and sub-test scores, at least that is reported in their service report to the university.

Q. Do they make any predictions based on just the composite score?

A. No, no, not ACT.

Q. Do they say anything about what they consider to be the best material from which to predict?

A. As far as what – As far as which – either grades or

[1876] ACT scores, they make the statement that the grades are a more powerful predictor.

Q. Do they go beyond that?

A. They—

* * * * *

THE WITNESS: The combination of grades and ACT scores is a more powerful—slightly more powerful predictor than either of the two alone.

Q. Could you look at 900 (g).

A. All right.

Q. To which institution does this refer?

A. This refers to Jackson State University?

Q. For what year?

A. For the year 1984/85.

Q. Is this pertinent to your opinion?

A. Yes, it is.

Q. Please explain.

A. Well, in that year, Jackson State had a cut score of 13, but if you look immediately below the line of 13, at the score of 12, you had seventy-eight students that got a two [1877] point zero or better, you have got forty-eight students who got two point zero or less.

At the same time—At the score of 11, you have almost an equal number of students, seventy-nine and eighty-three. Where at getting a score of two point zero or better, seventy-eight students got that or seventy-nine and eighty-three students did worse. They got less than two point zero.

If you will notice, it goes all the way down to 10 even, but not much significant variation, so what that means, again, is that if that cut score had been used for admissions decision alone, that a significant number of—in fact, if the score was used by itself, without the exceptions, then, of course, we see the able student—able because they showed that they were able, would not have been admitted based on their scores.

Q. Can you look at the second page of 900 (k), please.

A. All right.

THE COURT: Second page of what, Counselor?

MR. PRESSMAN: 900 (k).

MR. PRESSMAN:

Q. To what institution does this refer?

A. This refers to Mississippi State University, 1985/86. That page refers to those students who scored 14 and below.

* * * * *

[1878] Q. You are looking at the second page of 900 (k)?

A. Yes. Okay. This page refers to the ACT composite scores, freshman GPA's for Mississippi State, 1985/86, 15 and above.

Q. What is the page before that marked?

A. University of Southern Mississippi, 14 anf below.

* * * * *

Q. Could you look at the second page of 900 (k), please.

A. Yes. Okay. The University of Mississippi, 1985/86, 15 and above.

Q. Could you go to the next page please?

A. Okay. That will be the University of Mississippi, 1985/86, 14 and below.

Q. Okay. Is this pertinent to your opinion?

A. Yes, it is a good example, again, of the University of Mississippi for students who earned at the—who earned an ACT score of 14, twenty-two of them got a score of two point zero and above whereas twenty-one got less than two point zero.

If you look at the score of 13, the same thing happens. You even get a greater number or you also have a greater [1879] number who got their two point zeros. Number 15, compared to 14 that did not.

At the score of 12, you got twelve that got their two point zero and then that did not. Each case better than fifty percent are passing, and even dow to scores of 11, 10, and scores of 9, you are getting almost a break even situation as far as their actual performance at the University of Mississippi.

So, that would be another example of students who were – Did according to records, perform and earn the appropriate grade point average with less than the admission score required.

* * * * *

Q. Dr. Hilliard, if you would look at U.S. 900-0. Does that contain pertinent informatioln?

A. Yes.

Q. To what institution does this refer?

A. It refers to Mississippi Valley State University, 1984/85.

[1880] Q. What is pertinent here?

A. Basically the same pattern, that you take the cut score they had at the time of thirteen and look at the way the distribution of scores performed – scorers performed. See, at the level of twelve, you had fifty-three people who would have been cut out by a strict application of the cut score rule but who actually earned 2.0 or better as compared to 27 percent that scores less than 2.0. Almost two times as many right after the the score line. And then eleven get almost seventy people, sixty-nine people who earned an eleven and who earned 2.0 or better who would have been excluded. And you had thirty-one at that score level who did not do well. And then you had eighty-five at the score of ten who woud – who did indeed perform 2.0 or better and thirty-seven who did not at that level. And then at the score of as low as nine, you had a fifty/fifty split between the performers and non-performers, so it's the same pattern.

[1882] Q. Okay. If we could move on to your next reason for your general conclusion.

A. The Board standards tend to treat every score as if it means the same thing. It's really another way of stating a concern that I stated earlier, but to treat every score of fourteen as if it represents the same level of capacity in a student without knowing other things about that student, in my opinion, would be inappropriate. And I think the standards require that all scores of fourteen, or whatever the scores are, be treated basically the same.

* * * * *

Q. Is there anything to which you haven't previously referred?

A. In – if you would look at Plaintiff's 284, mine is stapled so that the fifth page will be the page I want to refer to. It has a heading, Percentage of University of Mississippi's Fall 1980 Entering Freshman, according to [1883] their ACT composite score category by race.

What that shows is that the patterns of scores on the ACT when comparing blacks and whites is considerably different. For example, you have thirty-six percent of the students who were black at UM that scored less than fifteen and the – scored t the fifteen or less. And you had at the same score level, only five point five percent of the whites. Or if you go to the oither end of the scale at twenty or greater you have black students only seventeen percent, whereas at that same score level you have forty-nine point two percent of the whites students.

So basically, all that does is to show that in terms of ACT scores there is quite a considerable distinction between the way the two groups perform.

Q. What year did those students enter?

A. Well, that – that's 1980 entering freshmen.

Q. Okay.

A. So if you take that and you put it with the—let's see, the Plaintiff's Exhibit 283, which is the—it's a document on the retention of entering freshmen at the class—entering freshmen classes at the University of Mississippi, and this document permits us to make comparisons between the retention of white students and the retention of black students at the University of Mississippi.

* * * * *

[1885] THE WITNESS: Basically what this particular document shows is that even though you get that kind of dispersion in ACT scores, if you look at students at that class that entered the University of Mississippi in 1980, if you look at them after four years you'll find that the percentage of white students that were still—tht were retained after four years is fifty-three percent. If you look at the percentage of black students, you'll find that after four years that same class is fifty-four percent. So it's virtually identical in terms of retention, even though you had that kind of disparity in terms of the admission test scores.

And, clearly, those scores have to mean something different for those two groups of students. That's as a group. And then as individuals, it's even more important that we try to determine what it is that helped the student [1886] to earn whatever score they may present.

* * * * *

[1910] THE WITNESS: As I indicated earlier, based upon the distribution of grade point averages between blacks and whites as contrasted with the distribution of ACT scores that if, for example, if you were relying on grade point averages alone, then that would make more black students eligile than relying on ACT alone. But relying on both of them together still would give an additional advantage, it would make black students have a better chance of being able to meet the admissions criteria?

* * * * *

[1923]

Q. Are you with me where you stated quote, "I wouldn't want to try to solve the admissions problem for you"?

A. Yes.

Q. "I'm not competent to do that?"

A. Yeah. The world should have been prepared. I remember saying that, but—that I wasn't prepared to do that. I've done admissions—I've set up admissions processes before. I've been involved in those quite a bit. So the word is unfortunate that I chose it, but that's not what I meant.

Q. Isn't it true, sir, you indicated to me just two months ago that you wanted to restrict your opinions to the ACT instrument itself and your belief that the use of a cut score was inappropriate for technical reasons?

A. Right. In terms of the use of the—in terms of the use of the ACT, yes, for cut scores.

* * * * *

[1925]

Q. Next question, Dr. Hilliard: Hypothetically, if the ACT score or if the admissions standard was modified, for example, to move from the fifteen to a ten and utilized in the same way that is presently being used, would your sole criterion criticism still apply?

Answer: Well, if the statement about what it is and what it isn't, then it would still apply, yes.

Then I asked a question, did I not sir: Would you consider that in your professional judgment applies misuse of the test?

Answer: Yes, it would be a violation of the ACT stated rational. Do you see that?

A. Yes.

Q. Now, the question, sir, is what I wanted to get to, lines 24 and 25. Would it be educationally unreasonable, in your judgment? And your answer, please, sir, at the top of page 92.

A. Uh-huh.

Q. Well, I really would rather not get into that because that would call for a different type discussion. I would like to try to restrict myself to the instrument itself. Educationally unreasonable, you know, that gets into a lot of other things. And then you told me some of those things, did you not, Dr. Hilliard?

[1926] A. Right.

Q. Among those, if you were evaluating the educational reasonableness of utilization of a test score you would want to consider the availability of developmental studies, wouldn't you, sir?

A. Right.

Q. And you would want to evaluate [illegible] consider the nature and purpose of the institution?

A. True.

Q. And you also would want to consider the resources within the system for offering higher education?

A. True.

Q. And then there on line eleven I believe you said, quote, "And on and on and on."?

A. Right.

Q. Close quote?

A. Right.

* * * * *

[1927]

Q. You haven't examined in depth the admissions of the institutions in this state, have you, Dr. Hilliard?

A. No, I have not.

Q. You haven't analyzed the problematic structure in this state, have you?

A. No.

Q. And you haven't made an analysis of the applicants to various institutions, have you, sir?

A. No, sir.

[1928] Q. No analysis—you haven't made any analysis of the applicants, total number of applicants to each institution?

A. When you say no analysis of the total number of applicants, I have some data that refers to the number of applicants in particular years that I've been citing. You mean other than those things?

Q. Other than the one table you read from today.

A. Other than the data I presented here or in the deposition, no.

Q. You haven't analyzed the resources available within the system, have you?

A. I haven't.

Q. You're not addressing today, are you, the feasibility of clinical admission to policies in Mississippi?

A. I have not addressed, nor would I, address the feasibility of any of that. That would take more information.

* * * * *

[1959]

TESTIMONY OF ROBIN NEELY JONES

THE WITNESS: I am rob Robin Neely Jones.

DIRECT EXAMINATION

MR. CHAMBLISS:

Q. Ms. Jones, could you tell us where you were born and your educational background, please?

A. I was born in West Point, Mississippi. I attended the elementary and secondary schools there in West Point. I went on to Tennessee State University in Nashville. I graduated from the University of Mississippi with a

Masters degree in library science. I'm a doctoral student at Mississippi State University.

Q. Okay. Could you give me your employment background, Mrs. Jones?

A. From 1962 to 1965, I was employed with the West Point Separate School District as an English teacher. From 1965 to 1968 I worked in the Starkville Public Schools as a librarian. In 1969—1968 to 1969 I worked with the Macon [1613] Public Schools. 1969 to 1981 I was employed at Mississippi State University as documents librarian.

Q. Okay. Turning your attention to your employment with Mississippi State University, could you give us the position you were employed in?

A. In 1969 I was appointed as instructor and documents librarian at Mississippi State University, where I served until 1981.

Q. And were you on the tenure track then?

A. Yes, I was the first black hired at Mississippi State with faculty rank. I was tenure track and received tenure before my resigning in 1981.

* * * * *

Q. Uh-huh. And in that position, what did you do?

A. My job as documents librarian was to catalog and make available all government publications for the Mitchell Memorial Library. I corresponded with the government printing office in Washington D.C. relative to receiving publications for the library. We were a semi-depository library and I was the one person hired in that department.

Q. Where was your office located?

[1961] A. If you're familiar with the Mitchell Memorial Library, at the time I was appointed I would say it was more or less in the basement of the library. I think that's

where you would call that location. Now, the library has been remodeled and I would consider that office to be located perhaps in the first floor of the library.

Q. Did you have access to other employees there, please?

A. Only during the time of break hours and perhaps when someone wanted some publication from that office.

Q. Could you further explain?

A. I was not in the flow of traffic or let's say my visibility was more or less hendered due to the location of the office. Some days I did not see anyone.

Q. Uh-huh. Was there any restrictions on communication, locomotion, please?

A. Not that I recall.

* * * * *

Q. Okay. Did you have an occasion midway through your career to talk to Mr. T. K. Martin about a door?

A. Many, many times I did.

[1962] Q. Could you explain to the court just what that was.

A. Where my office was located there were some double doors directly in front of my office and those doors were to remain cloased even though there was a sort of entrance way which led directly into my office. I was in the technical process department at Mississippi State University which in that department we did not service the public in that students of faculty members did not come to us for aid in the library. I went to Dr. Martin and I explained to him that I though perhaps the doors that were located directly in front of my office needed to be open and that I was a little bit uncomfortable with the doors closed.

Here again, I was the first black hired at Mississippi State University. I receive some—quite a bit of questioning from the black students at Mississippi State as to why I

was hidden or why I was located where I was and it made me just a little bit uncomfortable. And I went to Dr. Martin requesting that those be opened.

Q. That was about midway during your tenure; is that correct?

A. Yes, about four or five years.

* * * * *

[1963] A. Mississippi State has an open budget which is placed in a special area in the Mississippi room at Mississippi State Library and that publication reveals the salaries of all employees at Mississippi State. And on many occasions I had the opportunity to go and just kind of review the publication as to salaries. Not in particular of department [1964] heads or anything of that sort, but my fellow colleagues that worked with me at the library.

Q. And did you find anything?

A. I was disturbed at some of the information.

Q. Yes or no?

A. Yes.

Q. What, if anything, did you find?

A. Well, I perceived that there were other librarians at the library with education the same as I had who were making more money, or their salaries were higher than mine.

Q. And did you have an occasion to leave the university right after that?

A. I think for about two years I remained at the university until I could find employment elsewhere.

* * * * *

[2019] **TESTIMONY OF DR. ELIAS BLAKE**

Q. Could you name the factors that made up your formulation of the conclusion as that there is an educational gap?

Could you start with degrees granted and go into other?

A. Well, first, the—in comparison—a comparison was made between the proportions of blacks in the population of the State and proportion of blacks in the public schools of the State, the number of graduates that the State produces, all leading up to going into college.

Then, looking at the fact that in no area in the higher education statistics that I looked at did the black citizens achieve anything near their proportion of either access or of college graduates.

This means, of course, when you—when you—when you talk about what—and these are the factors that are involved in saying that there is an educational gap and it is unequal. When you talk about enrolling in college and [2020] particularly obtaining a college degree, a college degree qualifies a person for a whole range of economic opportunities in a State that if you do not have a college degree you cannot get everything from being a school teacher, which requires generally that you are a college graduate, certain kinds of management jobs and in business and industry require that you are a college graduate.

If you want to go to graduate or professional school and become a lawyer, it requires that you are a college graduate, or a doctor, so on.

So, that when you have these disparities which have not yet been overcome, you have a very serious problem of inequality in terms of black students of the State in regards to their education.

So that when I looked at the Mississippi citizens who have four or more years of college, and see that among those Mississippians between 20 and 24, nine point six six percent of the whites have college degrees or four or more years of college training, and only four point seven percent of the blacks.

If you take the 25 to 29 year old age group, you see that twenty-one percent of the whites in the state have four or more years of college compared to only elevent percent among the black citizens.

Those that are 30 to 34 years, twenty-one point nine [2021] percent of the whites have four or more years of college, compared to only thirteen percent of the blacks that have four or more years of college.

Now, at a minimum, those numbers ought to be equal, but when you go back into the system and you see that the proportion of blacks who are getting access to the system are less than the proportion of the blacks in the population, you also then get these differences in terms of the graduates and in terms of the completion of college in the—in the state.

As long as that is the case, then I am saying you have gaps in the education of blacks as far as college is concerned that need to be closed and need to be brought in line so that their educational situation is identical to that of the white citizens of the state and they then get the same benefits from that as white citizens in the state get in terms of the income, in terms of the jobs, and all of the other things that flow from that.

* * * * *

[2024] Did you have an occasion to look at the master level and/or PhD?

A. No. The—well, there were some data on PhD's in the—in the system from those institutions which granted PhD degrees, and—

Q. Do you—

A. And in 1985 and 1986, of the two hundred and seventy-six PhD degrees which were awarded in all of the institutions of higher education in the state, only nineteen or six point [2025] eight percednt of the PhD degrees went to black citizens of the State of Mississippi.

Now, that is a long ways from any kind of equal achieving of PhD degrees in the system of the State.

* * * * *

[2049]
from the State Department, and it represents the questions and inquiry, may it please the Court.

THE COURT: Well, Counsel, as to any question that I ask, if you have any questions that you want to ask him with regard to that, you may do it on redirect.

MR. CHAMBLISS: I don't have any questions, just exhibits.

Thank you, Your Honor.

THE COURT: All right. The Defendants may cross-examine.

CROSS EXAMINATION:

MR. STEPHENSON: Thank you, Your Honor.

MR. STEPHENSON:

Q. Dr. Blake, on direct examination today, you have expressed a conclusion with respect to academic programs in the state, sir?

A. Yes. Well, yes.

Q. And isn't it also true, sir, that with respect to your program work, that you have not addressed present allocation for distribution of programs in the state?

A. No, I have not done that.

Q. And it is also true, is it not, sir, that you have not directly, nor examined the educational justification of program actions taken?

A. Not the justification—well, I looked at the data [2050] that they had. They just simply gave a list of reasons, but no detailed justification. They indicated that ti was enrollment or other factors as to why they were eliminating programs.

Q. But, you, yourself, made no detailed analysis?

A. Right.

* * * * *

Q. You also testified, did you not, Dr. Blake, with respect to admissions, and I believe you identified a pool of high school students that you considered eligible for admission into the system.

A. Right.

Q. Isn't it true, sir, that you consider, under your analysis, all high school graduates to be eligible regardless of whether they have indicated any desire to go to college?

A. Yes. Yes, yes. I would.

Q. And isn't it also true, sir, that for purposes of defining the eligible pool, that you were making your calculations according to the representation of persons by race in the population as a whole?

A. Yes.

Q. All right.

A. No, not in population as a whole. As population as a whole within certain limited age groupings.

* * * * *

[2051]

Q. Well, that is—the purpose, though, of my question was, you concede that there are differences in the level of academic preparation between blacks and whites?

A. Yes, that is right.

[2052]

Q. I am showing the witness Board 183.

Have you seen that document, sir, before today?

A. No, I have not seen this document.

Q. And for purposes of the record, would you read into the record the title?

A. Admissions Standards and Core Requirements.

* * * * *

Q. I believe you indicated that you were President of [2053] Clark College?

A. Yes.

Q. And that is an undergraduate institution in Atlanta?

A. Yes.

Q. Isn't it true, sir, that your admissions standard at your institution utilize the standardized tests?

A. We use it as one index, yes.

Q. Isn't it true, sir, that for a student to be eligible for unqualified admission at your school that he or she must achieve a 700 on the SAT?

A. No, that—that is not true. It is not an absolute requirement.

Q. Well, isn't it the bases, though, for purposes of determining whether they obtain what you have described in your deposition as "unqualified admission," if they have the 700 and a C average in high school, they will be admitted without addressing other criteria?

A. But if—

Q. Can you answer my question, sir, yes, and then you may explain.

A. No. In our system, if the person has a score that is lower than a 700, but they have a higher grade point average, they can still be unconditionally admitted.

Q. Well, under your system, if the student has a 700 and a C average, he will be admitted?

[2054]

A. He will be admitted.

Q. And if he has a below 700 on the ACT (sic), you would look at additional criteria?

A. Yes.

Q. All right. And do you happen to know, sir, I believe we discussed it at your deposition, the ACT equivalent for the 700 on the SAT?

A. I am not positive of that. I believe that it is 18. I believe that 18—no, I don't know that. The 18 is equivalent to 800 on the ACT, but the equivalent of the other score, I do not know what that is.

* * * * *

[2054]

Q. I am showing you again, Dr. Blake, Board Exhibit 183, and referring you to the SAT score of 700, and ask you, if you would, please, sir, to read into the record the ACT equivalent according to this table?

A. The ACT equivalent of 700 is 15.

* * * * *

TESTIMONY OF WILLIAM L. WARE

THE WITNESS: My name is William Levi Ware, W A R E.

THE COURT: All right, sir.

MR. OSBORNE:

Q. Dr. Ware, for the record, state your race, please?

A. I'm a Negro.

Q. And where is your place of – where were you born?

A. I was born in LeFlore County, Mississippi.

Q. Okay. Where did you attend high school?

A. I attended high school in the Greenwood Public Schools. I graduated from Broad Street High School.

[2073]

Q. Did you attend college?

A. I did.

Q. Where?

A. Mississippi Valley State University.

Q. Okay. And what degree – did you receive a degree from –

A. I earned a BS degree there, yes.

Q. In what area?

A. Health and physical education.

Q. And did you do any further studies?

A. Yes.

Q. Where?

A. I have a MA degree from California State University, Los Angeles. I have a PhD from University of Southern California. All degrees are in health and physical education.

Q. When did you receive your Master's and when did you recieve your PhD?

A. That's been a long time ago, Counselor. I received a degree in 1957 from Mississippi Valley, 1969 from California State Los Angeles, and 1978 from the University of Southern California.

Q. Okay. What is the first job you held after you finished college?

A. I was fortunate to go back to Greenwood and teach at the high school I graduated from.

Q. What did you teach?

[2074]

A. I taught health and physical education.

Q How long –

A. I coached also.

Q. How long did you hold that position?

A I held that position for six years.

Q Okay. What was your next place of employment?

A. I then moved to the Los Angeles area. I coached and taught in the Bell Flower California Public Schools. My intent was to leave the state. I needed to further my education and it was not possible to get an advanced degree in the State of Mississippi, so we migrated there to Los Angeles.

Q. Why was it not possible to get an advanced degree from the State of Mississippi?

A. Well, we just were not admitted to Ole Miss. Mississippi State, Southern. They were offering advanced degrees.

Q. When you say we, who are you referring to?

A Excuse me, blacks.

Q. How long did you hold this position – was it Bell Flower?

A. I was there for six years.

Q. And did you take the position after –

A. Then I took a leave of absence to – I had earned – while I worked there going to school at night I

earned a Master's at California State. I entered the doctoral program at the University of Southern California and took a [2075] sabbatical. I did not go—rather, took a leave of absence. I did not go back but took a job with the state university system after getting a degree. Well, even prior to getting a degree.

Q. What job did you take in the state university system? At what school were you employed?

A. I was employed at California State University at Northridge. It's up in the North San Fernando Valley in the Los Angeles area.

Q. What position?

A. And I worked in the leisure study department. I taught. I taught a number of things. One, being administration of physical education.

Q. Where are you presently employed?

A. I'm presently employed at Mississippi State University.

Q. How long have you been employed at Mississippi State?

A. I have been employed at Mississippi State University since January of 1979.

Q. Okay. And in what position were you first employed?

A. I was employed as an assistant professor in the health and physical education department.

Q. What is your present position?

A. I'm presently an associate professor in that same department.

Q. Okay. What was your salary when you were initially [2076] hired by Mississippi State?

A. It's a pittance as it is now. I think for a half semester I worked for eight thousand dollars. I—that was just for that one semester, so it was like sixteen thousand

dollars or so.

Q. What is your present salary?

A. I'm at twenty-six thousand.

Q. Now, have you—you have received a promotion since you have been employed at Mississippi State?

A. Yes. I've gone from assistant professor to associate professor. I do have tenure.

Q. And when were you granted tenure?

A. Approximately four years ago.

Q. Have you ever been denied a promotion since you have been employed at Mississippi State?

A. Yes, I have.

Q. Have you—I've been denied a promotion from associate to full professor.

Q. And when were you denied that particular promotion?

A. About three years ago.

Q. And were you given any reason for the denial of that promotion?

A. Yes, I was.

Q. Did you—did you appeal the denial of that promotion?

A. Yes, I did.

[2077] Q. Who did you appeal it to?

A. I appealed it to the dean of the college of education. Well, I really appealed it to the department chair because I knew I would get no redress there. And I suggested to him that I might talk to the dean about it and I made a verbal appeal.

Q. What was the results of that appeal?

A. You mean did I get promoted?

Q. (Nods head up and down.)

A. No, I didn't get promoted. There was really no adjudication of the issue.

* * * * *

Q. Do you know the level of blacks employed in your particular department when you were first hired at Mississippi State?

A. The number then?

[2078] Q. Right.

A. None.

Q. And how many blacks are employed in your department now?

A. One.

Q. Has there been any changes in the department head since you've been employed in the physical education department?

A. There have been two changes, Donald Van Horn was department chairman when I came.

Q. Was he black or white?

A. He was white. Jack Maharon followed him.

Q. Who followed Mr. Maharon?

A. Paul Crebbs is current department chair, will be until July 1.

Q. What is Mr. Crebb's race?

A. He's white.

Q. What about Mr. Maharon?

A. White.

Q. Okay. Did you apply for either of those positions?

A. I applied for both.

Q. And were you interviewed?

A. No, I was not one of the five finalists.

Q. Were you given any reason why you weren't employed on either occasion? Weren't hired at least?

A. I did talk about it, asked some questions about it. Even – I think I even discussed it with someone at EEOC. [2079] The fact was that – rather, that I was told that they were looking for someone with prior administrative

responsibilities, with prior administrative skills.

Q. Did you have any administrative experience at the time you applied?

A. Can I answer by saying that I had as much as either one of the guys that were hired? None of us had any.

Q. Have you applied for any other positions with Mississippi State?

A. I don't want to make it appear like I'm a constant applicant, but I have. I applied for media center director.

Q. And who received that particular position?

A. Warren Land.

Q Who?

A. Warren Land.

Q. Is he black or white?

A. He's white.

Q. Were you told why you were not hired for that position, that particular position?

A. I don't think I even –

Q. Did you hear the question?

A. I don't think I even discussed it after I discovered who was hired.

Q. Have you applied for any other positions with Mississippi State?

[2080] A. Yes, I have.

Q. And what positions are those?

A. I applied for athletic director.

* * * * *

[2081]

THE COURT: Well, the Court's going to overrule the objection at this point. I will state for the record, gentlemen, that of course this case is – has been brought against the Board of Institutions of Higher Learning in the State of Mississippi. The Board of Institutions of Higher Learning has no authority to promote or hire individual

faculty members within a university and just as the Board of Institutions of Higher Learning has no authority to correct inequities that might exist in the primary and secondary school system of this state, that the previous – Dr. Blake talked about. They can only address matters that come before them. And of which they have authority.

I'll hear a certain line of testimony concerning these individual faculty situations that were in existence between [2082] an individual faculty member and a department head in the University, but as far as it having much probative weight with this court concerning discrimination by the Board of Institutions of Higher Learning, it's going to be very doubtful. So the objection is overruled. You may answer the question. Would you like the question read back, Dr. Ware?

* * * * *

Q. When did you apply for athletic director?

A. Late '70's, about 1977.

Q. Were you interviewed for that particular position?

A. No.

Q. Do you know who was hired to fill that position?

A. Bob Tyler. He was then head football coach. And the athletic directorship and the head football coach position was combined.

Q. He's black or white?

A. White.

* * * * *

Q. Okay. And – okay. What were the specific concerns you raised relating to you and other blacks being paid out of the compliance fund?

A. Well, one of the things that happened – and I saw an inequity there, I believe it was three years ago, the last

time faculty was given a substantial pay raise, the direction came that said department chairs, or whoever made those decisions about salary raises, should consider giving between two and twelve percent. Anything about twelve percent or below two percent had to be justified. The – there was an edict that came from the affirmative action office that said those people paid out of the compliance fund should be paid [2087] somewhere between two and seven percent. Anything above seven had to be justified, anything below two had to be defended.

Well, when I heard that I yelled discrimination. And, of course, raised an issue subsequently with the next – with that president, subsequently with the next president about that and voiced some concern that that was not legal.

Q. Are you saying that people who were paid out of the compliance fund budget received a lower percentage raise than people paid out of the regular university appropriations?

A. That was the direction, and I assume – that was the direction that was given and I'm sure they complied with that.

Q. What was the percentage of the raise that you received?

A. I received three and a half percent.

* * * * *

[2090]

Q. Have you had any complaints or filed any grievance relating to classes that you were not allowed to teach?

A. Yes, I have.

Q. And could you explain the nature of that?

A. Well, last summer notably, after having been scheduled to teach two classes, which is a normal load for a summer [2091] term, I was only scheduled to teach one

summer term, and there were others scheduled to teach two summer terms. I had eight people in one class, fifteen or sixteen in another class, I was told after the class had met for a week that I should discontinue that class, the class had been discontinued and I should counsel those students into some other class, and I was given some numbers of classes that would—had made it, that would go.

After having given those numbers, another faculty person—I had—had checked with the enrollment center the previous day, the previous Friday and this was Monday, and some of those classes had fewer people then my class had.

Q. Why was your class discontinued?

A. Well, they said because of low enrollment. I had eight people in that class.

Q. How many were you told you needed.

A. I was told I needed ten.

Q. And were there some classes allowed to continue with less than ten students?

A. Yes, there were some classes allowed to continue with fewer than ten.

Q. Were the instructors of these particular classes white or black?

A. White, yes.

Q. And did you file any complaint relating to disparity?

[2092] A. Yes, I did. I talked to the department chair, which was—which is termed informal grievance. I talked to the dean, and then I finally filed a written grievance, a written statement with the affirmative action officer.

Q. What was the nature of the grievance that you filed?

A. That I had been treated differently, consequently I

had been discriminated against, than other faculty member. Other faculty members, as I indicated, were able to teach with fewer, and they were given a choice whether they would teach with fewer than ten in a class with a prorated salary. I was not given that option.

Q. Can you explain you answer about salary being prorated and tell me what you mean by that.

A. Well, it meant tht they were able to teach that class—their classes and were not given the full compensation for their summer term.

Q. Okay. Did they have ten people or less than ten?

A. They had less than ten.

Q. Were you given that option?

A. No, I was not.

Q. Okay.

* * * * *

Q. Dr. Ware, at the time you attended graduate school [2093] outside of the State of Mississippi did you receive any scholarship from the state to attend this particular school?

[2094] A. Yes, I went to the University of Colorado, the—either in nineteen hundred sixty or sixty-one for a summer. The state subsidized that.

* * * * *

[2399] **TESTIMONY OF DOUGLAS ANDERSON**

Q. Okay.

A. To serve on the State Building Commission.

Yes, I served on the State Building Commission for approximately three years.

* * * * *

Q. What was your major assignment there?

A. Well, you know, the Building Commission basically oversaw—Is the overseer of the facilities on the campus, and basically we handle all building projects, and we handle the renovation or repairs for all State agencies.

In my capacity, I served as Chairman—A Subcommittee Chairman for Jackson State, Alcorn and Mississippi Valley State, in addition to Oakley Training School and Ellis down [2400] in—Ellisville and what-have-you, but—

Q. Okay. Now, these institutions that you just named, what predominantly race occupy or at least attend those entities?

A. Jackson State, Alcorn State and Valley State is predominantly black.

Q. What about Oakley Training School?

A. I would assume that most of the people there were also black.

* * * * *

[2404]

Q. Let's stop there. Could you—The—Senator Anderson, with respect to the project at Mississippi Valley State University, were there any problems encountered in the construction of that facility?

A. The stadium?

Q. Yes.

A. Yes, there were conflicts between—

Q. Could you explain that, please.

A. There was a conflict between the Building Commission and the College Board. We had some three hundred—

Q. Excuse me. If you could point—It would help the Court if you would point out—You said Building Commission and the College Board.

If you could point out the relative positions so that the record would indicate just—

A. Okay. Well, let me—I will explain it and then I will

try to answer your question.

We had appropriated some three hundred thousand dollars to build a first phase of the stadium at Mississippi Valley State.

[2405] The Building Commission decided that we should build a concrete first phase, all concrete.

The College Board took the position that that would be rather expensive, that we should not build an all concrete facility, we should build a wrought iron facility as a stadium which would be similar to a high school stadium, the kind that is open, if you drop something, it falls all the way to the ground, and the—The support of the stadium would be iron exposed to the weather and what-have-you.

The Building Commission took the position that we should build an all concrete facility. We argued that back and forth for several meetings.

We ended compromising with the IHL Board by building what we call a brick—a veneered type stadium. The problem that we had there was that we had the money to build either one. It was not a question of money.

For some reason, the IHL Board did not want a concrete stadium built at Mississippi Valley State, so we ended up with a veneered one, which gives the impression on the inside as being a concrete facility but on the outside of it, it would be the wrought iron exposed material.

* * * * *

[2410]

Q. Okay.

A. Sometimes the legislature did direct the Building Commission to preplan buildings also, so that was not done only by the College Board of the recommendations we did.

It also came from legislation from the legislature to preplan buildings.

Okay. Now, the proposal was written by Jackson State, they designed a building, a twin tower dormitory for Jackson State.

* * * * *

[2411]

Q. Okay. Keep going.

A. The proposal called for a twin tower building that could have been used as a co-educational dorm in that the two towers were separate with just a common lobby area, because we had such housing shortages for both female and male students.

The proposal was approved by the Federal Government, and the grant was—the grant was approved.

Now, however, the College Board objected to the proposed building.

* * * * *

[2413]

Q. Your heard the instructions of the Court?

A. The instruction from the IHL Board was not to construct the twin tower building, so we—The building hd to be redesigned and this amendment proposal had to be resubmitted to the Federal Government. Now—

* * * * *

[2414]

Stop me in the testimony and point out at any point where the project can be stopped based on what you are testifying about?

A. Okay. The IHL could not have stopped the project.

Q. Okay.

A. It was their recommendation to the Building Commission.

Q. Okay.

A. That that facility not be built for the twin towers.

Q. Okay. And you were about to say—you were starting all over.

A. So the College Board (sic) accepted those recommendations from the College Board, and then recommended that the—the building be redesigned.

Q. Okay.

A. For a single tower.

Q. Now, what do that—What—In redesigning, what does that encompass?

I guess that is what I am saying.

A. Well, then redesigning it to the single tower meant that—

[2415] Q. Go ahead, sir.

A. That proposal had to be resubmitted to the Federal Government.

Q. Okay. Could you go through that process?

A. And this process of resubmitting could have possibly resulted in the—in the grant being cancelled.

Any time you have to go back, this gives the Federal Government a chance to reject a project, if they desire to do so.

So, it jeopardized it. It could have endangered the grant.

Q. Excuse me. Was there any role that had to be played by any of those entities in going back?

For example, any matching of State funds or any other requirements?

A. No, all funds were, you know—

Q. Okay.

A. —To come from the federal funds except for the design of it itself.

Q. Okay. Was that—Did that have to be reauthorized on appropriations for that?

A. No, no, no. It did not have to be.

Q. Okay. I keep testifying. I am sorry.

A. So the building was redesigned, and in that design, there were some study rooms placed on the design to be on [2416] each of the floors of the—of the dormitory. That was rejected also by the College Board, so it took a second redesign to eliminate those study rooms to be placed on the floors.

Q. Okay.

A. After that, the building was approved and it was subsequently built.

Q. I think you testified earlier that there was an athletic and assembly building built.

Could you tell us what, if any, problems occurred during the construction of that facility?

A. The athletic assembly building, I introduced a bill for five million dollars for the construction of the athletic assembly building.

The College Board was arguing about my introduction of this bill because it was not a recommendation of the College Board, and subsequently they—The bill was put into appropriation, and it—we did get it approved, somewhat over the objections of the College Board.

Usually, there is a lapse of time in between the appropriation and the actual building, so something in the neighborhood of a year or two elapsed between the actual beginning of the construction and the appropriation.

This was a time of high inflation. The cost of building that building had escalated to in excess of six million [2417] dollars, which meant that we did not have adequate funds to complete the building.

The College Board recommended in a letter to the Building Commission that the capacity of that building, which was ten thousand—Jackson State at that time had a student body population in excess of seventeen thousand,

I believe. They wanted—They recommended that that building be reduced to less than five thousand capacity in order to stay within the appropriated funds.

The Building Commission took the position that we could construct the building and go to the legislature for additional funding to complete the building at the ten thousand capacity.

Talks were held with the Building Commission and the Chairman of the Appropriation of both Houses, who agreed to consider a bill to give additional funding.

The College Board said that we could not proceed with the building at the full ten thousand capacity—ten thousand seat capacity because they had to have an operational building within the ten—within the five million dollars.

In the construction phase, we could build most of the—most of the assembly building and to stay within the five million dollars, we would have to leave some of the floor under the bleechers area unsurfaced and that sort of thing, and we did not have enough funds to—to buy the—to buy the [2418] chairs for the facility.

So, the College Board then said that until you can make it a working, an operational building within the five million dollars that we could not proceed.

After some deliberation, we then got a letter for Jackson State University pledging that they would somehow help with the funding for the chairs to the tune of some two hundred and twenty-three to twenty-five thousand dollars. It was a paper type arrangement.

Before the Legislature would meet the next time, we would not have spent the full five million dollars, but we had to have the plan encompass an operational facility.

So, we received that letter and we then proceeded with the construction.

The final year in the Legislature, I introduced a bill to give an additional two million dollars to Jackson State for

completion of that project. That money was appropriated to Jackson State—the Building Commission for the completion.

At the time, I thought that the two hundred and twenty-three thousand dollars could be paid for out of those appropriated funds, but the College Board argued that they did not want the money paid for out of the appropriating funds, they wanted the money to come somehow from the budget of Jackson State. I did not see why.

[2419] If the money is paid, it should not have mattered, you know, from which source the money came. But, anyway, we did—I don't know how that problem was resolved. I do know that we did spend an additional million five on the building, and we used the balance of five hundred dollars on constructing parking at the assembly building.

I just might add, if I may, that these problems never existed at the predominantly white institutions.

[2494]

* * * * *

THE COURT: The Defendants may cross-examine.

DOUGLAS ANDERSON
CROSS EXAMINATION

* * * * *

[2497] Q. Senator, what year did the legislature appropriate the money for phase one of the football stadium at Mississippi Valley State University?

A. I don't know the exact year, but I would—I was serving in the House of Representatives, so it should have been somewhere around 1978, 1977, 1978, somewhere in that area.

* * * * *

[2498] Q. All right. Where were you serving in the legislature in 1982, which house?

A. In the Senate.

Q. All right. Do you recall that IHL's number one recommendation for facilities for institutions of higher learning that year pertained to Alcorn State University?

A. It may well have been.

Q. Do you—

A. I don't recall the priority list. I do not know that Alcorn State was high on the priority. I don't know which year, but they did receive some favorable consideration for a nursing school or what-have-you.

[2499] Q. That is exactly what it was. Thank you, sir.

Do you recall that same year, 1982, that IHL's number two recommendation for facilities for Institutions of Higher Learning was for Jackson State University?

A. No, I do not recall that—that priority.

Q. That was for a health center. Do you recall that?

A. No.

Q. The recommendation that came from IHL to the legislature?

A. I remember talk of a—of the health center or a need, but I did not personally see the—the priority list.

Q. In 1983, where were you serving in the legislature?

A. The Senate.

Q. Do you recall that that year that IHL's number one recommendation to the legislature for facilities for Institutions of Higher Learning was for Alcorn State University?

A. I do know that during that time there was a high recommendation for a stadium during this time. I don't know whether that is the particular one that you are talking about, but there was a high priority in that area.

Q. Senator, before coming up here, did you happen to calculate the percentage of State appropriations for capital improvements; that is, the percentage of all capital improvements of all universities, the percentage that has been spent at Alcorn, Mississippi Valley State and Jackson

State from 1970 up until the present time?

[2500] A. No, I did not, but I do know that there are some figures that was given by the College Board that are erroneous in that they did not include the funds that were expended at the Medical Center and some of the other facilities that we had.

We got some letters from them as to their percentages, but they left out specifically, the Medical Center, which askewed the percentage toward black institutions rather than showing the true picture.

* * * * *

Q. You have been in the legislature, sir, I believe twelve years?

A. That is correct.

Q. During how many of those twelve years have you been employed at Jackson State University?

A. All twelve.

* * * * *

TESTIMONY OF PAM GORDON

[2542] THE WITNESS: My name is Pam Gordon, G O R D O N.

DIRECT EXAMINATION

MR. OSBORNE:

[2543] Q. Mrs. Gordon, for the record, would you state your race?

A. Black.

Q. How old are you?

A. Nineteen.

Q. Okay. What county do you live in?

A. In Lafayette County.

Q. Okay. Did you attend high school in Lafayette County?

A. Yes, I did.

Q. What high school?

A. Oxford High School.

Q. Are you presently attending college?

A. Yes, I am.

Q. Where?

A. Mississippi Valley State University.

Q. Did yu take the ACT test in high school?

A. Yes, I did.

Q. What score did you make on that test?

A. Twenty.

Q. Ma'am?

A. Twenty.

Q. What was your grade point average in high school?

A. Approximately—it's equivalent to a B.

Q. Did any of the colleges and universities in Mississippi attempt to recruit you as a student?

A. Yes.

[2544] Q. What schools?

A. Mississippi Valley State and Jackson State University.

Q. Were you recruited by any of the traditionally white universities in Mississippi?

A. No, I wasn't.

Q. Were you recruited by Ole Miss?

A. No, I wasn't.

Q. Did you consider attending the University of Mississippi?

A. I did, but because of the reputation of it being unfair to black students, I decided not to.

Q. Were there any particular incidents at Ole Miss that caused you not to want to attend this school? Anything that happened on campus?

A. The incident that the black cheerleader refusing to take the rebel flag because of the near riots there and the Klan march.

Q. You are presently attending Mississippi Valley State?

A. Yes, I am.

Q. Has there been any talk about closure of Valley State since you have been a student there?

A. Yes, there has been.

Q. Has this had any effect on you or any of the other students attending school there?

A. It's—it causes low morale and some students are even applying for different colleges.

* * * * *

TESTIMONY OF DON COLE

[2574] THE WITNESS: My name is Donald Ray Cole, C O L E.

DIRECT EXAMINATION

MR. OSBORNE:

Q. Dr. Cole, for the record, would you state your race?

A. Black male.

Q. Where did you attend high school?

A. Sammy Brinkley High School, Jackson, Mississippi.

Q. Okay. Where did you attend undergraduate school?

A. Undergraduate my first two years were attended at the University of Mississippi and the final two years was at [2575] Tugaloo College.

Q. Where did you do your grad work?

A. I did graduate work at the University of Michigan, the State University of New York at Buffalo and the University of Mississippi, Oxford.

Q. What graduate degrees do you hold?

A. I hold two Masters degrees in mathematics and a PhD in mathematics.

Q. Where did you receive your PhD?

A. It was received at the University of Mississippi.

Q. In what year?

A. Nineteen eighty-five.

Q. Okay. Were there any other black graduate students in your department when you were in the PhD program at the University of Mississippi&

A. Yes, there were others in the department. I was in the department for a number of years so there were some along the way in there.

Q. How many years were you in the math department at the University of Mississipp?

A. As a graduate student?

Q. Right.

A. From 1977 to 1985, which is eight years.

* * * * *

[2578] Q. Let me ask you another question, Dr. Cole. When you were officially accepted in the department, in the math department at Ole Miss, was there any difference between the source of funds you received and the source of the funds [2579] received by the white graduate students?

A. Funding-wise, my funds to start the program were external to the mathematics department and most of the other graduate students held assistantships in the department, so funding-wise, mine was external. It happened to have come from the learning development center whose director at the time was Dr. Lucius Williams.

Q. Is Dr. Williams black or white?

A. Dr. Williams is black.

Q. Okay. What was the effect of the—what was the effect of you receiving funds from a different source from the other graduate students?

A. For the most part, it meant that most of my emphasis and commitments had to be—many of them had to

be external to the department and it meant that I had to be away from the department because the learning center was located somewhere else. And in light of that, I didn't have opportunity to have availəbility to many of the professors at opportune times in which I perhaps would have needed them. It also isolated me from discussions that would just naturally take place in such an environment if a few of the graduate students wanted to get together and talk about what "Professor A" did today and how they understood it. I was remotely located and so, in that sense, I missed out on quite aw bit of that, which is all but essential many of the times in going through [2580] the program.

Q. Okay. Did the other graduate students have offices assigned to them in the math department?

A. Yes. As they were graduate assistants and that was their source of funding, then they had offices in the department itself.

Q. Did you have an office in the math department?

A. Initially, I did not.

Q. Did you experience any problems with your PhD committee?

A. Yes, sir.

Q. And what problems did you experience with the PhD committee?

A. I had problems with the committee convening itself timely and properly so that major decisions could be made and so that my degree process could continue to grow at a timely pace and go smoothly.

Q. Did you make a request to any of you advisors to convene your committee?

A. Yes, I did.

Q. And how long did it take for the—how long did it take to—for the committee to be convened?

A. Initially, I made the request verbally, which was quite—which was quite common. And after a month or so

would go, I would make another verbal request. And soon I made a written request. And you asked about the time, and I would [2581] suspect that in the order of ten months to a year or so the committee was finally convened to—which was the initial phase to get things started.

Q. And what effect did this have in terms of your—the progress you were able to make towards obtaining your degree?

A. It slowed, it definitely slowed the degree process down. And also along the way, you know, one just beings, to himself, to make certain inferences to himself as to why this or that or why not, and so it's—for the most part, I guess it was mental strain and fatigue and et cetera, to build up, and it makes one wonder why, for the most part.

Q. What is the normal time that it takes to have a PhD committee convene?

A. I don't know about normal, but one could convene such in a week if they so desired or less.

Q. Did any—I'm sorry?

A I was just saying or less. Go ahead.

Q. Did any of the white students in your department experience similar problems in having their PhD committee meet?

A. Not to my knowledge.

Q. Do you know if any of the black students in your—if either of the other two students in your department, black students, had similar problems?

A. I only know that Mrs. Tucker had similar problems.

[2582] Q. Is there a particular number of times that the PhD committee is required to meet or should meet?

A. Not a particular number. It could be as few as two. It could be as many as needed to keep the process going on.

Q. Now, the other—was there any particular reason why you felt that you were at a disadvantage by not being assigned as assistantship within the math department when you initially entered the program?

A. Would you repeat that for me?

Q. Were you placed—let me ask it this way: Were you placed at any disadvantage by not being assigned an assistantship within the match program—math department when you initially entered the program? Disadvantaged as compared to your white colleagues?

A. Well, to the extent that I was excternally located and to the extent that the source of funding at the time required me to work at night, and to the extent that I didn't have the same accessibility because not being physically located in the same place, and other than a feeling of being isolated and not having availability as I would like to have had. You know, those things.

Q. Do you know whether or not the assignments that the white students received were related to the math program?

A. Well, in that it's part of the program, individual professors looked for various qualities and one of the principal [2583] qualities that's looked for at Ole Miss, of course, is one's classroom behavior and how well one does in the classroom when he's performing, when he's teaching, and without ability to actually demonstrate this then this—that can—that can make professors wonder or that can prolong things. So in that sense, that was a disadvantage.

Q. Do you know whether or not the work experience is considered to be an important part of the PhD program?

A. It's a very valuable part of the program.

Q. Are you saying initially that you were denied access to this important component of your program?

A. I was not able to demonstrate that part of the program because the funding came from a source that did not allow that.

Q. Now, you stated that you also attended Ole Miss as an undergraduate student; is that not correct?

A. Yes, I did.

Q. And why didn't you complete your degree, your undergraduate degree at Ole Miss?

A. After my sophomore year, because of racial unrest and protest at the time in which I was involved in, I was expelled from the university.

Q. What was the nature of the protest that you were involved in?

A. The nature of it was centered around the fact that many [2584] concerns of various black students on the campus weren't being addressed, and in an effort to get some of these concerns addressed we approached the administration with a number of requests, time and time again, and we held some demonstrations, which were very popular at the time, to protest the concerns not being met and to bring attention to them.

* * * * *

[2589] TESTIMONY OF DON COLE

Q. Dr. Cole, what did you major in—what was your major in undergraduate school?

A. Mathematics.

Q. Did you consider majoring in mathematics while you were an undergraduate student at the University of Mississippi?

A. Yes, I did.

Q. And did you talk to the department head or anyone in [2590] the math department about your intentions to major in mathematics?

A. Yes, I—I approached the then chairman of the mathematics department to talk about my majoring in math and a career in mathematics.

Q. And what was the response that you received?

A. Well, upon entering his office, he got got up out of his chair suddenly and asked that we go outside in the hall and he—we had a very brief conversatioln there. He asked me what did I want, and I told him that I was interested in majoring in mathematics and that I wanted to talk about particularly about that; what I needed to do and what I needed to take and, et cetera, and he made the comment that I could not major in math and asked me if I wanted anything else. The conversation ended there when I said that was all that I wanted.

Q. And who was this particular person?

A. Chairman at that time—I cannot remember his first name but his last name was Dr. Bickerstaff.

Q. Did Dr. Bickerstaff make any inquiry about your grade point average?

A. No, he did not.

Q. And what was your grade point average at that particular time?

A. I honestly don't remember.

[2591] Q. While you were an undergraduate student at the University of Mississippi, did you experience any harrassment because of the fact that you're black?

MR. GOODMAN: To which we object because of the relevancy.

THE COURT: Sustained.

MR. OSBORNE: Your Honor, may I make an offer of proof on this?

THE COURT: Very well.

MR. OSBORNE: Your Honor, I asked Dr. Cole did he receive any harrassment based on the fact that he was

black while he was an undergraduate student at the University of Mississippi. If the witness had been allowed to answer the question, he would have stated that on a regular basis white students would gather outside of his room and the rooms of other black students and threaten them with racial violence; that on many occasions, a note-notes would be left on his door, the door to his room with the word "nigger," with the statement "nigger go home" written on them; that on many occasions calls were made to the security, university security in an effort to prevent the white students taking acts of violence against blacks, and that the security force failed to respond.

The witness would also—I would ask him if there were barber shops on campus at the time he was a student and he [2592] would state that there were indeed barber shops on the campus of the—in the university buildings, but that the barbers would refuse to cut his hair and to cut the hair of other blacks. He would testify that almost nightly incidents occurred with racial overtones and that black students—because of the relectance on the part of the university security to provide them protection, that black students had to gather together and provide their own—provide protection for themselves and for other black students.

He would have testified about an incident that occurred in one of the Towers, the dormitories called the Towers, and in this particular incident he would have stated that a group of white students gathered outside of the room of one of the black students and would not allow him to leave the room. That calls were made to campus security and no response was received and that other black students had to come over and assist the student in leaving his room.

He would further have testified that when he and other black students used the bathroom, that other students had to stand guard at the door of the bathroom because white

students would come and threaten them and would turn the cold water off while they were taking showers and, as a result, they would get burned by the hot water; that because of this a student would have to stand guard when they took bathes.

[2595] * * * * *

MR. OSBORNE: Dr. Cole would further state that with respect to each particular instance of harrassment and racial threats, threats of racial violence, that complaints were made to the university administration and that on each occasion the administration failed to do anything to put a halt to the incidents of racial violence, of the threats of racial violence and the racial harrassment.

THE COURT: All right. That offer of proof is in the record. You may proceed.

MR. OSBORNE:

Q. Dr. Cole, you returned to the University of Mississippi for your graduate work; is that not true?

A. For the doctoral part of the graduate work.

Q. Okay. What was the atmosphere like when you returned as compared to the time you were there as an undergrad?

A. The most noticeable thing racially was the difference in the number of blacks students on campus. It was obvious that there were more than when I had—when I was an undergraduate and had left. That was the most noticeable thing.

Q. Were there any similarities between your two experiences?

A. There was a difference in the number of black students [2594] on campus, but I guess the attitudes, in my opinion, were a lot—were a lot similar. Blacks were still

pioneering. There were more undergraduates, but many of them who were graduate students were still going on untread grounds, and so attitudes were a lot similar.

And I guess another thing that was similar, to me, was the administration was still slow to move when an incident would surface themselves that were of a racial overtones when I thought that they probably should have moved a lot quicker and that that was because—because people respect leadership.

Q. When you say attitudes were similar, whose attitudes were you referring to?

A. I guess I'm referring to everyone's attitudes. We—the blacks still, for the most part, felt like they were struggling and the attitudes of many of the whites were—it was as if it was natural to be in opposition, so to speak, so—

Q. Opposition to whom?

A. It was as if black and whites were supposed—naturally opposed to each other. That was the attitudes on both sides. I'm saying that blacks' attitudes were a lot similar in that—that there were still things that we want, still black faculty questions, still staff and administration questions just asked before and I just felt white attitudes were a [2595] lot similar to that and perhaps can be characterized by: We've given you something, what more do you want.

* * * * *

[2603] Q. Dr. Cole, when you were an undergraduate student at Ole Miss, did you get the assistance—were you given any assistance by the faculty in your department in terms of planning your career?

A. No. I—I was not. I do believe that opportunity for such existed, and after a fairly bad experience of

overloading me one semester, I decided to pretty much take that upon myself and planned on my courses that I would take and plan the action that I would take.

Most of it was in the catalog, so I could take the catalog and see what courses that I needed to take and level and be a lot more comfortable with myself.

Q. Was your experience any different from what other black students experienced at the University of Mississippi?

A. My experience was no different than any of the others. We learned fairly quickly from others who had preceded us that certain class combinations that advisors would often advise us to take would soon lead us down a destructive path, that is, we probably would not be able to take all of the courses in that combination in a given semester and do well.

So we would often talk among ourselves about what would constitute a load that probably would be too heavy for the average person, and we would talk among ourselves as to what [2604] instructors and what not that we might avoid.

Q. Based upon your experience as an undergraduate student at the University of Mississippi, and as graduate student at the University of Mississippi, would you encourage other blacks to attend the University of Mississippi?

A. For the most part, I could—I would have to give my own occurrences that I had gone there at the University of Mississippi, and—in that I am a Mississippian, and I would like to think that those who are coming behind me as Mississippians—for the most part, I would like to see them in the state.

I would have to almost dissect that question as to whether we are talking about graduate and/or undergraduate, and as far as a graduate student, I would encourage him to go to the University of Mississippi and relate my experience there.

As an undergraduate, I would have to probably advise him of experiences that I had, and in light of that I think I would shy away as much as possible as actually having encourage him and have him make up his own mind and just relate my experience.

* * * * *

[2608] CROSS EXAMINATION

DON COLE

Q. Doctor, do I understand that your tenure at the University of Mississippi as an undergraduate student was in the 1960's?

A. That is correct, sir.

Q. And your tenure at the University of Mississippi as a graduate student was when?

A. From 1977 until 1985.

Q. And you concluded that graduate study by indeed obtaining a PhD degree in mathematics from the University of Mississippi?

A. That is correct.

Q. And I did not catch where you are employed now?

A. I am employed in Fort Worth with General Dynamics Corporation.

Q. While a graduate student at the University of Mississippi, did you teach as well?

A. Yes, I did.

Q. And over what period of time did you teach?

A. I cannot remember the exact year that I started, but I would suspect over a three or four year period.

Q. Did you teach mathematics?

A. Yes, I did.

Q. How many courses in mathematics did you teach?

A. Again, I cannot remember the exact number, but I would [2609] suspect that at a minimum of eight mathematics classes.

Q. Did you teach white students?

A. Yes, I did, sir.

* * * * *

TESTIMONY OF JAMES GILLEYLEN

[2659] THE WITNESS: My name is JAMES GILLEYLEN, G I L L E Y L E N.

THE COURT: All right, sir.

DIRECT EXAMINATION

BY MR. OSBORNE:

Q. Mr. Gilleylen, for the record, would you state your race, please?

A. Black.

Q. Where do—where are you originally from, Mr. Gilleylen?

A. I was born in Amory, Mississippi.

Q. Where did you attend high school?

A. I attended high school at Amory High School in Amory, Mississippi.

Q. Did you subsequently attend college?

A. Yes, I did.

Q. Where did you attend college?

A. I attended college at the University of Mississippi.

[2660] Q. Did you also attend graduate school?

A. Yes, sir. I initially attended the University of Mississippi in 1976.

I graduated in 1980 with a bahelor's degree in political science and history.

I subsequently attended graduate school at the university, graduating in May of 1983 with a master's in urban and regional planning.

Q. All right. What year did you finish high school?

A. I finished high school in 1976.

Q. In what month?

A. In May of 1976.

Q. All right. And when did you enter the University of Mississippi?

A. I entered the University of Mississippi in September of 1976.

Q. All right. And when did you complete your undergraduate degree?

A. Completed the undergraduate degree in May of 1980.

Q. And you said you majored in political science?

A. Political science and history.

Q. All right. While you were in—while you were an undergraduate student at the University of Mississippi, did any incidents occur which you felt were directed towards you that you felt were—felt occurred because of the fact that [2661] you were black?

MR. RAY: Object as irrelevant, unless it relates to State action, Your Honor.

THE COURT: Sustained.

MR. OSBORNE: Your Honor, if you allow me to develop this line of questioning, I can relate it to State action.

THE COURT: Well, all right. You—I will reserve ruling on it and allow you to develop that line.

MR. OSBORNE:

Q. Mr. Gilleylen, can you answer the question?

A. Okay. Could you repeat it again for me?

Q. While you wsere an undergraduate student at the University of Mississippi, did any incidents occur which was directed towards you that you felt occurred because you are a black person?

A. Yes, sir. Beginning with my initial entry in 1976, there were particular problems in terms of the freshman English program.

I have a particular concern that I and other black students generally received no higher grade on our English themes higher than C. That was very consistent.

There were particular problems of individual themes in which we submitted, the themes in freshmen English program being primarily a writing, comprehensive writing course, where we would submit those themes to the teachers. We would [2662] receive a C or lower grade without any explanation or very little explanation as to why we were receiving a C, D or F.

In particular, I can relate to one particular theme that I submitted. We were asked to compose a theme with a topic related to something that had occurred during our early life, something that had profound impact upon our life.

Now, being a product from the early integration of the 70's, Freedom of Choice Plan in Education, I selected as a topic the integration program.

Particularly, I related to my first year in fifth grade as a student in a predominantly white school under the Freedom of Choice Plan which I entered.

I wrote a theme basically talking about the textbooks that we used, which were the textbooks that the predominantly white schools had used previously, that were all worn out and outdated, we received them in the predominantly black schools.

Particularly, I remember studying, trying to bring myself up to date using a fifth grade textbook that summer before entering school. Those textbooks were so much outdated, it did not help me any.

I wrote the theme and I received an F grade on that particular theme.

Q. Who was your instructor?

A. A graduate instructor named Mrs. Stewart.

Q. A black or white person?

A. She was a white person.

Q. After you received an F on this particular paper, did you haVe a conference with Dr. Stewart?

A. It was not Doctor, it was Graduate Stewart. It was graduate instructor Ms. Stewart.

Q. Ms. Stewart.

A. Yes. I did. I asked her for specific feedback as to why I received an F, because there were no marks on the paper, with the exception fo an occasional verb tense or grammatical error, but there was no real feedback. I asked her for the feedback and she basically–

She said, I can tell you a couple of things. She said, one, black people have an inherent problem in terms of their mastering the English language. You have problems in terms of being able to write and speak. Problems with the spoken language, as well as the written language.

She told me that automatically I got a D when she read my topic, and that it went down hill from there.

Q. And what was your topic?

A. My topic was Integration and the Freedom of Choice Plan for Education.

Q. All right. Now, did you take any foreign language while you were in undergraduate school?

A. Yes, sir, I did.

Q. All right. Can you relate any incident related to your [2664] foreign language course, what you felt occurred because you were black?

A. Yes, sir. In particular, I had a–I had a French course in the Liberal Arts Department. You were required to take twelve hours of a foreign language.

This was under a Ms. Black, a French instructor, taking a first semester French course. I was having particular problems in terms of the subject/verb tense and its relationship.

I went to her and asked her for—after scoring poorly on the first test, asked her for some particular pointers or additional assistance in terms of making more than I was able to master that course.

She said that she could give me very little direction because, one, we all understand that black people have problems with the English language, and, therefore, it is not expected that we would be able to master a foreign language.

What she suggested to me, in her opinion, she said was her best suggestion is that I select a major that did not require a foreign language as a requirement and, therefore, I would not have to do any—I would not have to deal with that sort of problem.

Q. Mr. Gilleylen, you also attended graduate school at the University of Mississippi?

A. That's correct.

A. And did you have any particular problems during your [2665] graduate experience which you felt related to the fact that you were black?

A. Yes, sir. The more overt type actions actually took place in graduate school, keeping in mind that graduate school was in 1980 through 1983.

I had particular problems with a professor named Clyde Cook.

Q. What department does he work in?

A. Clyde Cook was a professor of the Urban Regional Planning in the Urban and Regional Department.

Q. And that is the area in which you got your master's degree?

A. That's correct.

* * * * *

[2678] Q. Now, you subsequently attended a graduate school at Ole Miss, is that not true?

A. That's correct.

Q. All right. And what degree did you receive?

A. I received a master's in urban and regional planning.

Q. Did you experience any problems while you—when you attended graduate school, which yu felt were directly related to the fact that you were black?

A. Yes.

Q. Okay.

A. Directly related to the fact that I was black, and also having just completed my tenure as Black Student Union President and having involvement in the student demonstrations and so forth, I felt there was a direct correation between my activities there, as well.

Q. Did you have a professor in graduate school named Dr. Cook?

A. I had a professor named Clyde Cook. He was not a PhD.

Q. Did you have any particular problems with Dr. Cook—with Mr. Cook which you felt related to the fact that you were black?

A. Yes, sir, from the very beginning.

Q. Okay. Could you relate those to us?

[2679] A. Just a couple of weeks after I had entered the program, each student was charged with the responsibility of developing an economic base study.

An economic base study was a comprehensive report of a city or an area and its economic stability, everything from employment, race, population, demographic type research in doing comprehensive projects as to what could be expected for that community in terms of industry, population and economic stability.

Much of the data that we needed to have to complete that study, we would be given a three-hour credit for it. The report had to be collected from the census data.

Mr. Cook informed the class, of which I was a part of, on about the second week of class that he didn't want us to

place too much credence in the census data, because it was collected by a bunch of—in his words—"unemployed illiterate black folk," and then proceeded to tell me, being the only black student in the class, that perhaps Mr. Gilleylen can further expand on that since he is much closer to the situation than any of the rest of us.

Beyond that, there were instances in which I prepared a comprehensive or a research paper. The research paper being on demand responsive transit, in which I was to receive three hours credit for it.

I turned into Mr. Cook a typed report of about twenty-five [2680] to thirty pages. I had used approximately thirty-five to forty references.

Mr. Cook called me into his class—I mean, into his office and told me that my grade was an F. When I asked him why I had received an F, after flipping through the report I saw no comments; he said, well, I am not really fully prepared to give you a great deal of comments. What I would like for you to do is go over to the library and check all thirty-five or forty references so I can review them, because my gut reaction is that you have plagiarized your paper.

I asked him, give me some specific instances throughout the paper in which it would lead him to that conclusion, and he told me—he said, I don't really have any specific instances, but I do know that black folk don't write that well, so you need to go over and check the reference material in order for me to show you specifically where you have taken quotes without indicating that they were quotes in your paper.

I refused. I pursued the issue with the Director of—I mean with the Department Head at that time, who was Dr. Robert Jester.

Dr. Jester reviewed the situation and a year later I received a C grade on the paper.

Q. Were there any other incidents involving Dr. Cook which related to the fact that you were black?

A. Dr. Cook constantly did things like—

[2681] Q. Mr. Cook?

A. Mr. Cook. He did things like—he did things like racial slurs. Always in the hallway, so it was loud enough for me to hear but no one else to hear.

Things like I am coming into class and he says, well, I guess we can start, the "nigger" has arrived.

Those sorts of things. Really attacks on me, personally, in terms of I am walking down the hall, and making other comments like, you resemble the "Fat Albert" character on the television show and things of that nature, because he obviously had a knowledge of my involvement in the Black Student Union, and during class times in referring to things—

For instance, he was discussing the Iranian hostage situation at that time, and he asked me in class whether or not the Black Student Union would be prepred to have a sit-in for the Ayatollah and perhaps get the hostages home.

Or, for instance, when he had accused me of plagiarizing my paper, he wanted to know if perhaps the Black Student Union was going to be coming over to his office and have a sit-in until he gave me a grade.

He returned papers with things like, here is your paper, with and—have you received a C, with a C drawn from the top of the paper to the bottom of the paper. Here is your C, for colored, thoses sorts of things.

* * * * *

[2683] Q. Now, how many graduate courses did you take from Mr. Cook?

A. Of the total fifty-four hours requires, I only took six hours under Mr. Cook, six hours of required courses

work under Mr. Cook, he being the only professor in the department that taught those courses of subdivision and zoning.

Mr. Cook related to me on several occasions that I would never become a professional planner, that I could forget about pursuing the field, and it gave me particular pleasure when I saw him about a year ago to be able to tell him I was an Assistant Director of Planning and Development in the City of Dallas with a staff of about sixty-eight persons.

Q. What grade did you receive from Dr. Cook in the two courses that you took from him?

A. I received a C and a D in those courses.

Q. What is your present position?

A. I am currently Assistant Director of Planning and Development for the City of Dallas. My activities include all the development activities, particularly subdivisions, zoning, development and coordination, Boards of Adjustment and the comprehensive rezoning of property. Particularly, two of those areas having been Mr. Cook's expertise in the two courses that I had to take, zoning and subdivision.

Q. Did you receive any assistance from the placement office at the University of Mississippi in securing that particular position?

[2684] No, sir. There was absolutely no assistance offered. Our Placement Department was a real problem.

Everything from when companies would come to the university to visit to interview students, in many cases we did not know that those companies were visiting.

Q. When you say "we," who are you referring to?

A. Myself and other black students. There was a system you could go by the Placement Office and you could explain to them what your interests wsere, you completed a placement file, you talked with one of the placement

counselors. You indicated what your specific interests were, and then the intent was when companies were visiting the university, that you would be made knowledgeable of their visiting and would have an opportunity to schedule interviews with those companies.

I had a particular problem in that being in a technical field, the public sector did not generally visit the university, so my question went even further, could they assist me in terms of identifying employment opportunity that I might pursue.

But, I, and many other black students just simply had to leave the university and pursue employment on our own. There was not a real opportunity to get a great deal of support from your advisors, in terms of them assisting you in not only in developing your career track through the academic programs but in terms of pursuing career opportunities after you had [2685] graduated.

As a result, I worked within the state as Executive Director of the Oxford Housing Authority, particularly during my tenure in the graduate program, which I completed the master's program and was Executive Director of Housing Authority and finally pursing the employment after graduation with the City of Dallas on my own.

Q. Now, were there any differences in the way the Placement Office responded to black students and the manner in which the Placement Office responded to white students who were seeking interviews.

A. I cannot really determine whether or not there was a difference in terms of response. I do know that my white counterparts knew when the companies were coming to campus, and there were no public notices on the placement bulletin board in many cases that those companies were there, but yet those persons would show up in class.

For instance, when I was in the urban regional planning graduate program, particularly emphasis in my program, I

had fifty-four hours placed on management. I, therefore, had taken several courses in the business school.

I found it interesting that white students knew exactly when companies were coming to campus and were able to interview with those companies, and yet black students did not seem to have any indication that they were coming. [2686] Particularly, we would sometimes meet blacks who were representatives of those companies, who would walk the campus and meet black students and say, look, I am here interviewing for IBM, are there any sisters and brothers in the university system with this particular degree or pursuing this particular degree, let them know that I am over here interviewing and that we have a particular interest, as we have indicated to the university, to recruit minority students.

Now, at that time, of course, many of the companies, expecially larger companies, IBM and Texas Instruments and some of those were pursuing minority students.

Q. Were any of your concerns relating to the failure of the Assistance Office in assisting blacks in securing employment ever reported to the university administration?

A. Whenever we discussed the problems with the Chancellor and the staff, Dr. Fortune generally indicated that the—he would indeed pursue it, that he would indeed look into the matter, that he was disappointed that that would either occur or that we—or that we had the impression that it was occurring, and in any case that he was going to work very hard to resolve the problems and find out what was occurring.

I only know that we did not reach a resolution.

Q. Did you get any feedback from Dr. Fortune with respect to the concerns that you raised?

A. In particular, I know that while in graduate school in [2687] 1982, the university under Dr. Fortune attempted in part to address similar concerns.

One in particular was that—that students in the computer science program interview with Dr. Fortune and the professors in that department were beginning to get some access to that process, but it was not through the Placement Office.

It was generally through conversations between Dr. Fortune and professors in those departments.

Q. All right.

A. Our major concern being we wanted to respond to the Placement Office, although we were encouraged by the individual efforts of certain professors.

[2689] * * * * *

Q. Okay. Now, did you experience any, what you call, back lashes as a result of your activities as BSU president?

A. During my tenure as BSU president, we were heavily involved in student protest and particularly during the [2690] Communicative Disorders problems that we were experiencing.

There were several times which I feared for my safety and the safety of other persons on the Executive Council. There were incidents of cross burnings on the dormitory door, paper crosses, my brakeline being destroyed on my automobile and I had to start driving other students' cars so that I would not be at personal risk in terms of any repercussions that might be occurring.

We contacted the campus security, who said they looked into the incident. They were not encouraging in that one of the officers told me that that type of activity could be expected because—because of the activities that had occurred, there were obviously students out there that disagreed with the position that we were taking and, obviously, there was going to be some radical elements on each side that were going to take matters into their own hands. The encouragement that he gave me was to be more careful.

Now, according to the Chancellor, because we were particularly concerned that when black students take a stance that we be afforded adequate protection. Again, the Chancellor and his staff indicated that they would indeed get with campus security. But, again, we continued to receive the harassing phone calls and the racial slurs as we walked down the sidewalks and just general harassment.

Q. Did you get any feedback from the Chancellor's office to [2691] the complaints that you made?

A. Feedback in terms of resolution, there was none. Feedback in terms of they would deal with the security and to try to find out and get to the bottom of the causes, they would do that, but no particular resolution being reached.

* * * * *

[2692] CROSS EXAMINATION

[2693] * * * * *

Q. Thank you. You mentioned requests that your group made, I believe, relating to university procedures in hiring black professionals and staff members, didn't you?

A. When you reference my group, are you—

Q. Which group were you talking about when you said you had approached the university to talk to them about black faculty?

A. Okay. I had specified I believe earlier the Black Student Union.

Q. Okay. And you did make such requests and overtures to the university, didn't you?

A. That's correct.

* * * * *

Q. And I turned to Appendix E of that Implementation Report of the Plan of Compliance of the University of Mississippi. [2694] Does this page in Board 100 appear to be a memo, an interdepartmental communication to signatory officers from Porter L. Fortune, Chancellor of the

University, relating to affirmative action efforts to recruit black professionals?

A. Yes, that's the heading.

Q. What's the date on that?

A. It's dated July 28, 1980.

Q. Is that during or very near the time when you were the president of the Black Student Union?

A. Actually July 28, 1980, my term as president of the BSU would have ended. My term ended as of May, 1980.

Q. So it was very shortly after your term, then, during which you requested certain procedures be enacted, is that right?

A. Would you repeat your question, please.

Q. Yes, sir. You had said earlier, I believe, that you approached the University requesting that certain procedures and policies be adopted with respect to recruitment of black professionals and faculty, didn't you?

A. During my tenure as Black Student Union president, we had presented on several occasions requests to the university that there be an increase in overall recruitment of black students and so forth.

Q. That's right. And July 28, 1980 was soon after your tenure ended then; is that right?

A. That's correct.

[2696] * * * * *

Q. Do you see that this memo included a list of required procedures for recruitment of black professionals at the University of Mississippi?

A. I believe the third paragraph does say (reading), I'm repeating the list of required procedures given in my January 15th memorandum—

Q. And could you read—

A. And adding a number six.

* * * * *

Q. Yes, sir. Could you read the very first of the required procedures to the court, please?

A. It says (reading), black students and/or black staff members are to be appointed to search committees and opportunity is to be provided to have black candidates visit with black students while on campus.

Q. And at the very bottom of that policy document, doesn't it say that it's most important not only that signatory officers keep these procedures in mind but also that the chair of search committees be made aware of them?

A. That's right.

Q. In fact, students, black students were included in search committees looking for black professionals and faculty, weren't they?

[2697] * * * * *

THE WITNESS: (Continuing)

A. I believe what I indicated to you previously is that a part of our list of demands, we had indicated that we wanted greater involvement in terms of the hiring process, to be involved in both the recruitment of black faculty members as well as to be involved in the actual communication and interaction with perspective faculty members as they visited on [2698] campus.

Q. And are you aware of whether such actions and procedures were undertaken by the University after you made that request? Do you know whether that request was fulfilled or –

* * * * *

A. I guess in response to your question the only thing I can say is that after 1980 I was not actively involved and was not the official representative for the Black Student Union. Being in graduate school I did not have the involvement. If I answered the question, then I can – I can't speak from my personal experience that they were or were not involved. I can tell you I was not involved.

Q. So from 1981 to 1987 then you don't have knowledge whether the kinds of things you were requesting actually occurred; is that right?

A. That's correct. From 1980 I was not involved and I do not have any direct input to give you as to whether or not they were or were not involved.

Q. Would you turn in Board 100 that I handed you, page 89, I believe it is, please. And tell me when you reach that page, [2699] and let me make sure we're on the same page.

* * * * *

Q. Okay. Have you had a chance to look over this page?

[2700] A. Yes, sir.

Q. Doesn't it indicate that at least one one particular occasion a group of black students and faculty and staff members attended a reception for a gentleman in the Chancellor's dining room?

A. Yes, sir. I believe it does indicate that on Monday, May 4, 1981, at four o'clock p.m., fourteen black students and faculty members –

Q. And that that gentleman was a president of an organization composed of black faculty members that worked to recruit minority faculty to Mississippi State and to help new black faculty members' transition to life at Mississippi State?

A. I believe that is correct.

Q. Is that correct?

A. Yes.

Q. And, in fact, doesn't it indicate that this was an activity undertaken by the University of Mississippi?

* * * * *

A. Yes, sir, it does indicate – it's on official stationery.

* * * * *

Q. Mr. Gilleylen, what was the Student Plannint Association when you were in school?

A. There was a—we have a professional organization called the American Planning Association. The American Planning [2701] Association has various chapter groups throughout the state, throughout the nation. We, at the time, at the University had a local chapter called the American Planning Association and it was our student chapter.

Q. Who comprised that group?

A. The students in the program.

Q. Well, did you have any white students in that group?

A. Yes, sir.

Q. Did you have black students also?

A. Yes, sir.

* * * * *

Q. Who was elected president of that group while you were there?

A. Any particular year that you were—

Q. Were you ever elected to serve as president of that group?

A. Yes, I served as president of the group in 1980—to the best of my knowledge, I believe it was 1981 or 1982.

Q. Yes, sir.

A. I'm not real sure.

Q. Mr. Gilleylen, you mentioned the efforts you made to get the University to be responsive in attempting to recruit black students, didn't you?

A. That's correct.

[2702] * * * * *

Q. This has been marked for identification as Board 140. Mr. Gilleylen, have you seen this document before?

* * * * *

Q. I won't question you specifically about the document then, but you have mentioned previously that a black gentleman, Ben Williams, had been elected by the student body of the University of Mississippi as Colonel Rebel, didn't you?

A. Yes, that's correct.

Q In fact, by that time there were a lot of other achievements that black students at the University of Mississippi had, weren't there?

A. There were other achievements, yes.

Q. For example, we have black students in the Old Miss Hall of Fame. Are you aware of that?

A. Yes, sir.

Q. Are you aware that you had black students on the Chencellor's Honor Roll?

A. Yes, sir, I believe we did. I don't know any specific individuals that I can relate to.

Q. Do you know we had black students on the Dean's Honor Roll?

[2703] A. I'm sure we did.

Q And in Who's Who on American College Campuses or whatever that organization is?

A. Yes.

Q. And black students in Old Miss in ODK and Mortar Board, the honorary societies?

A. Yes, sir.

Q. You knew that. And you knew that Rose Jackson had served as the president of the campus-wide Association for Women Students. Did you know that during your tenure?

A. I believe she did. I believe she served in 1979.

Q. 1978-1979. And you know, don't you, that that's a campus-wide organization with students of all races in it, don't you?

A. That's correct.

[2705] * * * * *

Q. One last thing, Mr. Gilleylen. You spoke about being unaware of when companies were coming to campus to seek new employees. Do I remember that correctly?

A. Yes, I was speaking specifically of my knowledge of particular companies coming.

Q. But you say white students knew about the companies coming to campus, is that right?]

A. I said that there were white counterparts who were in classes with me that were aware of the companies coming to town.

[2706] Q. Did you ever read the "Daily Mississippian"—

A. That's correct.

Q. —when you were a student at Ole Miss?

A. Yes, I did.

Q. And don't you recall that every time a company came to interview through the personnel, through the placement office, they advertised—

* * * * *

Q. Do you recall the advertisements when companies were coming to campus to interview through the placement office that were regularly placed in the "Daily Mississippian" when you were a student there?

A. In terms of regularly placed, I'm not sure. In terms of my reviewing them, yes, I did. I might also add that I had no way of comparing that to the actual number of companies that actually attended the University or whether or not that really gave me specific knowledge of

every individual company that visited the University.

Q. Weren't the companies listed in the "Daily Mississippian" when they came to campus to inverview you?

A. Yeah. What I jsut said was that, yes, there were companies listed in the "Daily Mississippian."

[2707] * * * * *

TESTIMONY OF LINDA CAMPBELL

THE WITNESS: My name is Linda Campbell, C A M P B E L L.

DIRECT EXAMINATION

BY MR. OSBORNE:

Q. For the record, state your name, please.

A. Linda Campbell.

Q. Oh, I mean your race. Would you state your race?

A. Black. I'm sorry.

Q. Did you attend the University of Mississippi?

A. Yes, I did.

Q. When did you attend Ole Miss?

A. From 1975 until 1979.

[2710] Q. Where did you attend high school?

A At North Panola High School in Sardis, Mississippi.

Q What did you major in at the University of Mississippi?

A. Speech pathology.

Q. Did you receive a degree in that particular major?

A. Yes, I received my Bachelor's degree in 1978 and my Master's in 1979.

Q. Okay. Have you done further studies since you left the University of Mississippi?

A. Yes, I have.

Q. And where did you do this particular study?

A. I received my doctorate in speech pathology at Howard University.

Q. Are you presently employed?
A. Yes, I am.
Q. Where?
A. At Southern University in Baton Rouge.
Q. What did you do at Southern?
A. I'm assistant professor in the area of speech pathology.
Q. While you were an undergraduate student at the University of Mississippi, what was your grade point average?
A. Approximately three point twenty-five on a four point scale.
Q. Okay. Now, while you were an undergraduate student at the University of Mississippi, did you have an experiences [2711] —did you experience any specific incidents of racial discrimination related to your academic performance?
A. Yes, I did.
Q. Can you relate that to us?
Q. There were a number of professors who, on the one hand, attempted to put all the black students who were speech pathology majors into the clinic, enroll them as patients, as such. There were a number of individuals who consistently and systematically failed black students. We were told that black students could not talk and, therefore, should not major in speech pathology and we were counseled to seek other areas for majors.
Q. Can you give me the name of any particular professor in the Communicative Disorders Department who would enroll black students in therapy and treat them as patients?
A. Yes. One professor was Mrs. Julie Wentland.
Q. What was her position?
A. She was assistant professor and clinical director.

Q. What were her duties and responsibilities as the clinical director?
A. She taught prerequisite courses for students which enabled the students to enroll in clinical practicum. She assigned students specific clients. She assigned for the students also supervisors for clinical practicum.
Q. Did you take any particular classes from Mrs. Wentland?
[2712] A. Yes, I did.
Q. How did you do in her class? What grades did you receive?
A. Primarily C's, and the C was a good grade from her as a black student.
Q. What do you mean by that?
A. For her, she had a history of repeatedly failing blacks automatically. Her courses were courses that were known to determine whether or not a student would make it in that particular department, and if you received a C that was good. Most students repeatedly took the courses several times and either dropped out of school or transferred into other majors and succeeded.
Q. When you say most students, who are you referring to?
A. Most black students.
Q. Can you relate any specific, any other specific incidents involving Mrs. Wentland which shows she treated black students differently from whites?
THE COURT: What did you say her name was?
THE WITNESS: Julie Wentland.
THE COURT: How do you spell that?
THE WITNESS: W E N T L A N D.
THE WITNESS: (Continuing)
A. For her, one particular instance, and this I experienced as well as some other students, other black students would also experience, she would verbally attack us or

verbally [2713] criticize us for supposedly shortcomings, but she would criticize us in front of patients or patients in the clinic, as well as in front of other students. She would accuse us of being late, not being prepared, not adequately carrying out our tasks. And when she discovered instances when she had made a mistake, she still refused to apologize.

MR. OSBORNE: (Continuing)

Q. Okay. Now, can you give me – would you give the Court, please, an example of the things necessary to complete the degree that you were pursuing.

A. Okay. A part of the degree, the certificate of clinical competence is the license that is awarded by the national association which is the American Speech Language and Hearing Association. This particular certificate allows a speech language pathologist to work in all settings, including private practice.

In order to meet the requirements as indicated by the American Speech Language and Hearing Association, the student had to receive a Bachelor's and a Master's degree in speech language pathology, the student had to obtain a minimum of three hundred client contact hours with particular patients with specific speech and language disorders. These client contact hours consisted of actual one-on-one work, okay, with a particular client, and this included evaluations and designing treatment programs for individuals with speech and language [2714] difficulties.

The requirements also included passing a national examination upon completion of the Master's as well as completing a clinical certification year which is called a CFY career. This is a year's internship, post-Master's, under the supervision of someone who is certified by the national association.

Okay. Once an individual achieves all these criteria, the person is awarded a certificate of clinical competence.

Q. Now, how – let me strike. Did you experience any difficulties in being able to complete your requirements for your degree while you were an undergrad student which you felt might have been related to the fact that you were black?

A. Yes, I did.

Q What difficulties did you experience?

* * * * *

THE WITNESS: (Continuing)

A. Okay. Mrs. Wentland, a person, like I said, she was the [2715] clinic director, she was a person who taught the prerequisite courses. You had to pass her courses in order to get into the clinic. And it is the clinical practicum requirements that are the most difficult to obtain because of the fact that those hours are actual client contact hours as such.

Mrs. Wentland is the individual who supervised me during my first clinical practicum. She assigned the client and she would schedule the time for staff meetings as well as the time for actual client contact for therapy.

She, on many occasions, in front of other students in the department as well as parents and other faculty members accused me of either not turning in information on time or of inadequate, quote, performance, inadequate performance, as well as not being prepared.

Q. Were any of these accusations true?

A. No, they weren't. And on many occasions, some of the other – the other white students would indicate that, no, it wasn't Linda, that was my report that I didn't put on your desk by eight o'clock. And they would say that, and I would be standing there but she still refused to –

MR. STEPHENSON: Your Honor, object to what others said or did.

THE COURT: Overruled. The objection was to what others said or did. Objection is overruled.

THE WITNESS: (Continuing)

[2716] A. Even when the students were there, and they indicated that it was their report, maybe, that wasn't turned in, she still wouldn't apologize to me.

MR. OSBORNE: (Continuing)

Q. Would she say anything to white students who indicated that they were responsible for the late reports?

A. No. But she would make the statement in the presence of them but the statements were made to me.

Q. Now, were you required to—I think you said you were required to have a minimum number of patient contacts?

A. Uh-huh.

Q. Now, who was responsible for ensuring or assigning you to patients?

A. That was Mrs. Wentland.

Q. Did Mrs. Wentland make any difference between white and black students in terms of patients' assignments?

A. Yes, she did. There are certain clients with communication disorders that are rare. They are harder to get or harder to come by, I should say. She would assign these particular clients as a priority to the white students, which, in essence, meant that they could get the specified number of hours that they needed as far as treating and diagnosing individuals with those types of disorders, which for them, meant they could graduate earlier than us because of the fact that we had to wait in line before we could see those clients.

[2717] Q. Now, were there any other things that were assigned or required by Mrs. Wentland in which she made a difference between black and white students?

A. She also assigned the number of clients differently between black and white students. The black students for the most part only had one or maybe two clients per semester. And the number of clients per semester is significant because of the fact that a portion of the graduation requirements is stipulated based upon meeting specified quotas as indicated by the American Speech Language and Hearing Association.

Q. Okay. Now, did Mrs. Wentland ever give you or any other students any assignments in writing assignments?

A. Yes, she did.

Q. Was there any difference made in the nature of the assignments given black students as opposed to the assignments given white students?

A. Yes, there were. There were many occasions in which a black student might be assigned with a white student. The white students were given the portion of the assignment that was the most objective. That was the portion that consisted of a guideline that she and her husband had developed. It was more of a fill-in-the-blank related to specific information that should be collected from a client. The black students were given more subjective portions of a report which were more difficult to write because of the fact that there were [2718] no fill-in-the-blank portions as such. The portions that the black students were assigned were those portions that varied, depending upon the specific behavior exhibited by the client rather than specific information that's reported from a test.

So it was easier for white students to make a higher score on the clinical writing than for the black students because all of the—because the white students only had to fill in the lbanks, for the most part, numbers and client names, as compared to the black students who had to write up an entire section. And because we had to write up

sections on our own, there was a greater probability for us to receive lower scores in clinical writing.

Q. Did you have any other—were there any other incidents involving Mrs. Wentland in which she treated black students differently from whites?

A. Yes. At one point she was either counseling black students to choose another major or enrolling them in the therapy because she said that black people couldn't talk and, therefore, if we were going to work as speech language pathologists we needed to receive therapy ourselves.

Q. Okay. Were there any other faculty members in your particular department who treated blacks differently from the manner in which they treated white students?

A. Yes, there were.

Q. Who were they?

[2719] A. One was Dr. Thomas Wentland

Q. Was he related to Mrs. Wentland?

A. Yes, he was.

Q. Okay.

A. As her husband.

Q. What was his position?

A. He was chairman for a period of time of the department.

Q. Can you relate to us the incidents involving Dr. Wentland?

A. Dr. Wentland, being the chairman, he was the one who reviewed all student grievances. He was the person who assigned graduate student fellowships.

* * * * *

Q. Mrs. Campbell, did you have personal knowledge of conduct [2720] that Dr. Wentland engaged in?

A. Yes, I do.

Q. What conduct is it that you have personal knowledge of?

A. It was related to financial assistance.

Q. And what conduct did he engage in that showed he treated you and other black students differently from the manner in which he treated white students?

A. Well, the amount of money I received was significantly lower than the amount of money the other black students received as compared to the amount of money that the white students received. It was also determined that the monies that we were receiving were supposed to have been monies for fellowships for minority students and the white students were the ones who received the bulk of the money.

* * * * *

Q. Dr. Campbell, I believe you stated that you were awarded less than your white colleagues. How much money did you receive?

A. Approximately a thousand dollars per semester. A [2721] thousand dollars for the academic year.

Q. Okay. And this was when you were in graduate school?

A. That was when I was in graduate school.

Q. How much did your white colleagues receive?

A. Approximately two thousand. Two thousand to twenty-five hundred.

Q. And these were funds awarded by Dr. Wentland?

A. That's correct.

Q. Other than Dr. Wentland and his wife, Mrs. Wentland, were there any other faculty members in your particular department who treated black students differently from the manner in which they treated white students?

A. Yes, there were.

Q. Can you give me their names?

A. One is Mrs. Julie Walton, and the other person is Dr. Carol Juarez.

Q. Did you have any specific incidents involving either one of these particular professors?

A. Yes, I did.

Q. Can you relate that to us?

A. Okay. Dr. Carol Juarez was a particular professor who refused to talk to black students. When she did talk to black students, the stipulation was that I had to, as well as the other black students, had to sign a statement which, in essence, summarized the topic of discussion or the topic of [2722] the conference. She had the option to choose a person to sit in on the conference and the conferences always had to be planned. The conferences were taped and she typed transcriptions which we signed after the conferences, but these were only done for the black students. None of the white students had to do this.

Q. Okay. Now, were there other instructors who engaged in similar conduct?

A. Yes, there were.

Q. Who were they?

A. Okay. Mrs. Julie Walton was one.

Q. What specific conduct did she engage in?

A. Mrs. Walton, at one point, and specifically during a period of time after Mrs. Wentland had left, became clinic director, okay?

Q. Okay.

A. And Mrs. Walton assigned students to clinical—assigned black students to clinical practicums differently than she assigned white students. And by differently I'm referring to the number of clients we had scheduled. The types of disorders that the clients had scheduled.

Mrs. Walton also taught one of the prerequisite courses to enroll—prior to enrolling in the clinic.

[2723] * * * * *

Q. How did black students fair, Dr. Campbell, in Mrs. Juarez' class?

A. Ms. Juarez or Wentland?

Q. Who—

THE COURT: Walton

THE WITNESS:

A. Walton, I'm sorry.

MR. OSBORNE:

Q. Walton.

A. Mrs. Walton failed all black students. If you didn't fail the course, the highest possible grade was a C.

Q. Were there any other problems that black students experienced with Mrs. Walton?

[2724] * * * * *

Q. Dr. Campbell, the testimony you're about to give, is it based on personal knowledge?

A. Personal knowledge.

Q. Okay. Can you proceed?

A. Yes.

Q. Okay.

A. There were a number of students, black students who failed Mrs. Walton's classes. We—as well as—the black students would go back, repeat the courses, but she would fail them again and again. The black students, after a period of time, either changed majors or went into—or like I said, or were failed from school. Okay.

Q. Did you attend graduate school at the University of Mississippi as well?

A. I did.

Q. How did you—what was your grade point average on the courses you took in graduate school?

A. Approximately three point five.

Q On a what basis?

A. Four-point-0 scale.

Q. Were there other black graduate students in your program at the time you attended graduate school at Ole Miss?

[2725] A. Yes, there were.

Q. Who were they?

A. There were four, Lydia Vaughn, Deborah Reynolds, Billie Green and Patricia Cole.

Q. What are the requirements for completing that Master's program?

A. Completion of thirty-six hours and successfully passing written comprehensives and an oral exam as well as completing the clinical clock hour requirements.

Q. Do you have to complete—can you give us the order in which you must complete the requirements?

A. Okay. The courses in clinical practicum are usually simultaneously. The comps are written, are taken at the end of the semester, at the end of your last semester. And after comps, if you successfully pass comps, the student is then eligible to take the orals.

Q. Are you required to successfully complete your courses before you can take the comprehensive?

A. You can take the comprehensive exams a semester before you finish all your courses.

Q. Now, did you have any problems—let me ask you this, what does the written comprehensive exam consist of?

A. It's an overview of knowledge of communicative disorders, and this is knowledge of communicative disorders based upon the courses that each student has taken.

[2726] Q. You did take the comprehensive examination?

A. Yes, I did.

Q. And the exam that you took, had you been exposed to information on the materials covered by the exam?

A. Yes.

Q. And in what manner?

A. They—the material covered by the exam only consisted of items or materials that was covered during the courses.

Q. You had already taken the exams?

A. I had already taken the courses.

Q. Had you taken examinations in the areas of your comprehensive?

A. That's correct.

Q. Had you successfully completed the examination?

A. For the courses?

Q. Right.

A. Yes, that's correct.

Q. Did you have any—did you experience any difficulties in completing or passing the comprehensive examination?

A. Yes, I did.

Q. What difficulties did you experience in that respect?

A. Well, for the comprehensive exams, out of ten questions I made zero percent, meaning that I failed all ten.

Q. Did any other black students take the comprehensive examinations at the same time you took them?

[2727] A. Yes, two others.

Q. How did they fair?

A. One student, Debbie Reynolds, passed two of the ten questions and she made, in essence, twenty percent, and the other student, Billig Green, passed five of the ten questions and she made fifty percent.

Q. Did any qhite students take the exam, the comprehensive, at the same time you and the other two blacks took the exam?

A. Yes, they did.

Q. How did they fair?

A. There were three white students who took the exams at the same time and they all passed.

Q. And how did you grade point average compare to the whites who passed?

A. Higher than the three who took it at the same time.

Q. What about the other two blacks, what kind of grade point average did they have.

A. Well, above a three-point-0.

Q.Now, prior to the time you took the comprehensive examination, were you offered employment by the University of Mississippi?

A. Yes, I was.

[2731] * * * * *

Q. Now, I ask you if prior to the time you took the comprehensive exam, you were offered employment by the University of Mississippi?

A. Yes, I was.

Q. And did you accept employment with—

A. No, I [illegible]ned the position.

Q. Why [illegible]u decline the position?

A. I was t[illegible]hat the position would entail me being [2732] assigned to a created position. I would be listed on the University's roster as a faculty member which would, according to the department chairman, aid the department relative to satisfying the demand of the black students to hire a black professor; however, I would be listed on the roster an employed by the university, but I would be placed in a public school conducting therapy in Holly Springs, Mississippi, which is about thirty-five to forty-five minutes away. I would have no contact with the students or no contact on the main campus, but that the reward for me would be the ability to put on my resume that I had been once employed by the University of Mississippi.

Q. What about the salary you were supposed to receive?

A. Well, because this was a special position that they were creating, the salary that I would receive would be less than what I would receive if I went and just got the position on my own.

Q. Now, how many times were you contacted about this?

A. I was contacted repeatedly. I would say the department chairman repeatedly suggested that I take the position as well as several of the faculty members. I would say probably about ten times.

Q. Now, after you refused to accept the position, did you experience anything which you thought were repercussions based on that fact that you refused to accept the position?

[2733] A. Yes, I did.

Q. What was that?

A. Well, it was at this particular time that I refused to accept the position that I got the results indicating that I had failed comps. And it was also at this particular time that I—that I had gotten the results also—or I had actually talked to a professor from Perdue University. I had previously been accepted into a doctoral program at Perdue University and the department had assisted me in obtaining this particular position; however, when I—when I talked to the department chairman at Perdue he informed me that he was under the assumption that I was not going to attend the doctoral program in the fall because I had failed comps.

Q. At this particular time, had you been advised that you had failed the comps?

A. I had just been told. And he said he had received knowledge at least a week earlier and that he had called me repeatedly, waiting on me to tell him that I had failed

comps, but I didn't know that I had failed comps until the day before.

Q. Now, do you know how he found out you had failed the comps?

A. Yes .

Q. How did he find out?

A. My major advisor, who was instrumental in me obtaining the position, and the department chairman.

[2734] Q. Now, did you appeal through the grievance procedure at the University the fact that you had failed the comps?

A. Yes, I did.

Q. What was the results?

A. Through the university?

Q.Right.

A. Okay. I was awarded my degree the next semester.

[2741] * * * * *

TESTIMONY OF LYDIA SPRAGIN

THE WITNESS: My name is Lydia Spragin. My last name is spelled S P R A G I N.

[2742] * * * * *

Q. For the record, state you race, please.

A. I am black.

Q. Where are you from?

A. I'm originally from Clarksdale, Mississippi.

Q. Did you attend the University of Mississippi?

A. Yes, sir, I did, between the years of 1979 of August of that year to August 6, 1983.

Q. And what did you major in?

A. I received a bachelor of science in biological sciences with minors in chemistry and English.

Q. Have you attended school since you left the University of Mississippi?

A. I recently completed on May 9th, 1987, my degree of pharmacy at The Howard University College of Pharmacy and Pharmacy Sciences in Washington, D.C. At present, I'm a graduate pharmacist and am slated to take the Boards on June 23rd and 24th of this year.

[2743] * * * * *

Q. While you were a student at the University, did you experience any indcidents of racial discrimination related to the classroom or anything in the academic environment?

MR. STEPHENSON: Objection, Your Honor, it calls for legal conclusion.

THE COURT: Overruled.

THE WITNESS:

A. Yes, sir, I did.

Q. Could you relate those experiences to us?

A. Yes, sir. During my freshman year at Ole Miss, I was enrolled in the freshman English class and I was the only black in this class. And I, being a valedictorian from Immaculate Conception High School and making a 24 on the ACT and 21 in [2744] English, I thought that I could write extremely well. When I got to Ole Miss, I received an F for the midterm, and I didn't understand this, so I went back by the instructor's office. The instructors name was Sarah Leach, and I asked Mrs. Leach to explain to my why I was receiving an F in English. And she said no reason whatsoever, you know, when I learned to write where she could understand it, then I would get a better grade.

So I decided to utilize the learning development center at Ole Miss and I talked to Pat Cole, who was then on staff there and had her Masters. And I asked here to look over my papers, and we collaborated and turned them in. And I could never get any more than C on these papers. And C was the final grade that I received from the course. When I went by to ask the professor whether or not or how he arrived at this grade, I happened to see an open

grade book on her desk and discovered that form midterm to the final grade, there were no marks in her book for any of the papers that I had turned in. She had just simplu carried over a C. And I spoke with about ten other people in the class, all of whom were white, and they all got A's. And I just didn't understand.

Q. Do you—

A. Uh—

Q. Go on.

A. In my major field, I took the course hystology, a course [2745] I had not previously done well in, and I decided to retake it. And Dr. McClerkin was the professor. And as I was President of the BSU, and I started to get involved in activities at Ole Miss, I noticed that my grades began to decline in proportion to my involvement with the BSU. So I had approximately a 97 average in Hystology. And one afternoon I was sitting there looking through the microscope and she came back and stood over me and started drawing circles on pieces of paper sitting next to me. And I paid this no attention. I just felt that it was some sort of tactic that she was using. And she said to me, "Do you know what these are?"

And I said, "No, I don't."

And she said, "These are—this is us." And us, I took to mean the white people or the white faculty or the white student body or the whites in general at the Unviersity of Mississippi at that time.

And then she says, "I've been on staff here at the University of Mississippi for a long time. I was here when Meredith was here and I can tell you about him." And she looked to see if this had any effect on my, and it didn't, because I kept looking right in the microscope. And she colored in one of the circles, and she said, "Do you know what that is?"

And I said, "No, I don't."

She said, "That's James Meredith. You know what we did [2746] to him. You know what we are going to do to you."

Consequently, I got a B out of Hystology with a 97 average. And to this day, I don't understand why.

* * * * *

[2747] Q. When you were the President of the BSU, did you [2748] experience any repercussions or harassment which you felt resulted from the fact that you were involved in BSU?

A. Yes, sir, I did.

Q. Can you relate that to us?

A. they were in the forms of telephone calls, letters, physical abuse. The telephone calls started at seven o'clock in the morning—

MR. STEPEHNSON: We object to this unless there's some predicate laid with respect to official or state action.

THE COURT: Objection will be sustained. The predicate should be laid that this—any harassment as resulting of individuals would be irrelevant.

MR. OSBORNE: Your Honor, if you would give me an opportunity I can tie this into failure of the university to carry out its responsibilities when these incidents were reported. The University has an obligation to ensure that students on campus are properly protected and we can tie it into that.

THE COURT: For that purpose, I'll allow you to develop that line.

MR. CHAMBLISS: Thank you, Your Honor.

MR. OSBORNE: (Continuing)

Q. Can you relate to us the type of harassment you experienced?

A. Telephone calls started approximately seven o'clock in [2749] the morning, and ususally I didn't even

set an alarm clock because I knew they would start at that time. It started ringing and you pick up the phone and they say, "Good morning, nigger; what's up, nigger," stuff like that and I just got to the point where I came to expect those telephone calls.

When we walked across campus, we got racial antics, like "Hey, nigger, where you going," and, "Hey, nigger, here's your flag." Blase, blase.

Q. What flag were they referring to?

A. The confederate flag. It's the rebel flag with a cross.

Q. Okay. Continue.

Q. And then one night, we were—a rumor got started that the BSU, with me as president, was going to meet at Bishop Hall, and I had scheduled no such meeting. We were operating on word of mouth at that time and we were doing so because we had no protection from the University Policy Department.

* * * * *

Q. Do you have personal knowledge of this incident, Ms. [2750] Spragin?

A. The person came to me room, and she related the incident to me.

* * * * *

A. At any rate, the policy department at the University of Mississippi offered no support to students. We were being harassed on campus.

MR. OSBORNE: (Continuing)

Q. Were these black students?

A. Black students—

MR. STEPHENSON: Same objection, Your Honor, still no predicate.

THE WITNESS: (Continuing)

A. I got slapped in the face with a confederate flag in the middle of the university.

THE COURT: Just a moment. Objection overruled as to the last question.

MR. OSBORNE:

Q. Continue.

A. I got slapped in the face with a confederate flag. [2751] University Police Department was standing on the corner and people were driving by in red convertibles yelling, "nigger, nigger," and they could see that I was being harassed, but they didn't come over to stop it. The Department of Justice in Atlanta started to call me every morning at that point and asked me if—

MR. STEPHENSON: Object to what they said, Your Honor.

THE COURT: Overruled.

MR. OSBORNE.

Q. Continue.

A. To ask me if I was safe. And they wanted to know if anything had happened the night before that they should know about. And usually, I would tell them, "no, sir, nothing happened last night." But on this particular occasion I had to tell them, "yes, sir, something happened." Because when I was—the rumor broke out that we were supposed to have a meeting at the BSU, some black students of the BSU did go to where the meeting was supposed to be scheduled which was Bishop Hall. By the time they got there, approximately two thousand white students waiving confederate flags and chanting, "two, four, six, eight, we didn't want to integrate and you made us.," met them over at Bishop Hall and they started banging on the doors. And they called me because I had asked the black students not to respond violently to any outbursts that was made or physical attack made on their [2752] person. They called me and they said. "we're scared, come and get us."

And you call the police; of course, there was no response from the policy department.

So we called the community, we called some of the local leaders and ministers to come and try to help rescue those people who were trapped over in Bishop Hall. And I also gave a call to personal bodyguards that we had set up. We had twelve men set up on a force led by Joe West to go over and try to get those people safely out of Bishop Hall.

Now, I don't know how they got out of there, butthey did get out of there and they came over to my dorm. And I said, "We need to get together. We'll get together, for lack of a better place, at Armstead Church here in Oxford." And we called them and they graciously allowed us to meet there. But we couldn't really meet there either, because people started coming and shouting things and we had to post our personal bodyguards outside of Armstead Church in order to just have a meeting and the policy were nowhere to be seen.

On this same evening that same crowd of people dispensed and marched down to Thi Beta Sigma House and started throwing rocks and stones at the windows and literally threatening members of Thi Beta Sigma Fraternity.

Q. Is that a black fraternity?

A. Yes, it is.

* * * * *

[2753] Q. Do you know any specific individual living in that particular fraternity house?

A. Yes, I do, John Hawkins, vice president of the BSU and Thi Beta Sigma and the first black elected cheerleader at the University of Mississippi was domiciled at that particular house.

Q. Was Hawkins the object of any of this harassment that you experienced?

A. I believe that Hawkins was the primary target, but I believe that all black students were the target, because they were shouting, "kill Hawkins, kill Spragin; two, four, six, eight, we didn't want to integrate and you made us." And, "nigger night, nigger night, nigger night, let's get the niggers."

* * * * *

Q. Now, you said Hawkins was the first black cheerleader elected. Did any controversy arise after he was elected [2754] cheerleader?

A. John Hawkins, after he was elected cheerleader, for reasons that – of his own, chose not to wave the rebel flag of the University of Mississippi, the confederate flag.

Q. What happened after he chose not to wave that particular flag?

A. He began to receive a lot of threat notes and death threats. So much so that he couldn't even go out on the field and cheer. And he expressed to me a concern about his life.

MR. STEPHENSON: Your Honor, object to hearsay.

THE COURT: Objection overruled as to the last statement.

MR. OSBORNE:

Q. Can you continue.

A. He expressed a concern tome about his life being in danger each time he cheered in front of the football stadium. So I decided that it was time for John to have somebody else on his side rather than John just by himself, and I asked the members of the Black Student Union if they would be willing to support John Hawkins in his stance not to wave the confederate flag at the University of Mississippi. And we unanimously voted to support John Hawkins in this stance.

Shortly thereafter, the Klan decided to march here in Oxford to demonstrate, I guess, what they called the true spirit of the confederate flag. And they carried this [2755] demonstration out on Saturday. I believe it was March 23rd.

Q. What year was this?

A. I mean October 23rd.

Q. What year?

A. 1982. 1982.

Q. Okay. And now did you report—what was the response when you reported the failure of the security to protect the students to the university administration?

A. I reported it to Chancellor Fortune. And the incident that made me report to Chancellor Fortune was four students reported to me—because I had asked them not to go out on their own and violently commit any actions—that they were being attacked in their classroom. And I told him that students were here at the University of Mississippi to learn and not be violently attacked. They could not work under fear and under pressure, and he had an obligation to us as students to protect us and support—and provide that support that we needed to ensure that we could actually learn and get what we came to Ole Miss for, which was an education, and he said, "uh-huh. I see. I'll consider it." And he left town. And nothing was done.

Q. Now, what particular class was this?

A. It was one of the courses being offered in Conner or Bondurant Hall. I don't exactly remember which one, but I remember it was one of those halls.

[2756] A. They were attacked by their fellow classmates. They reported to me that chairs were lifted and raised toward them as if they were going to be struck at, and while they were waving the flag talking about, "Nigger, see this flag, we not going to get rid of it. Ya'll go

home." And they just felt so intimidated by the whole thing that they left the classroom itself, and they came to talk to me about it.

Q. Can you relate to any other incidents of harassment that you experienced?

A. I could probably relate harassment incidents for a long period of time. I have letters here where it—by people who suggested that I come—one stated by an Ole Miss alumni said there were two roads coming into Old Miss—

MR. STEPHENSON: Your Honor, if the Court please, we object to reference to letters and summarizations of letters.

THE COURT: Sustained.

THE WITNESS: I have a copy.

MR. OSBORNE: What was the ruling, Your Honor?

THE COURT: Sustained.

* * * * *

[2757] we think this particular information is relevant in that it goes to the responsibility of the university to take action to ensure that black students are adequately protected. Even though the particular incident she talks about was not necessarily sponsored by the university, once it was reported to the university, the university has an obligation to take some action to ensure that students—that the students were adequately protected. And we think it's relevant in that regard.

THE COURT: Well, the objection is still sustained to any contents of any letters that she might have received from unknown persons that have no connection with—

MR. OSBORNE: May I approach the witness to obtain the letter?

THE COURT: All right.

MR. CHAMBLISS: See if it got a name on it.

THE COURT: All right. You can do it. If it's known or unknown, as long as it has no connection with the State of Mississippi, the ruling will be the same.

MR. OSBORNE: Your Honor, may I make an offer of proof on this?

THE COURT: All right.

MR. OSBORNE: Your Honor, the witness, I asked the witness a question and she stated that while she was President of BSU, she received letters from alumni of the University of [2758] Mississippi. One of the letters she received is dated April the 22nd, 1983. The witness would testify that the letter stated that (reading): There are the same roads going out of the University of Mississippi as there were going in. As you were not deterred from entering, neither you will be deterred from leaving. Most students who seek higher education chose those institutions that are—that best suit their needs. As Ole Miss does not do these things for you, it would be suggested that you seek one that does. And it's signed an interest alumni.

And the witness would further state that this particular incident was brought to the attention of the university in conjunction with other simillar incidents of harassment and nothing was done by the university.

THE COURT: Are you suggesting it would have been up to the university to track down an anonymous writer?

MR. OSBORNE: I'm suggesting, Your Honor, that the university had an obligation to protect black students, and that one of the things that could have been done in this particular regard would be to meet with the Alumni Association in an attempt to discourage this kind of conduct. And especially hold some kind of campus-wide meeting and advise the white students that black students are not to be harassed if the university was serious about

ensuring that the stay of black students on campus would be productive and [2759] that they would be allowed to do what they came to the university to do.

THE COURT: All right.

* * * * *

[2761] Q. Ms. Spragin, while you were a student at the University of Mississippi, were you aware of the University newspaper?

A. Yes, sir, I was.

* * * * *

Q. Were there any articles published in the "Daily Mississippian" that were offensive to you?

A. Yes, sir.

Q. And—

A. There was an edition of the "Daily Mississippian" that came out on April Fool's Day which they call the "Daily Mistake". In that particular issue, the Black Student Union had been proposing all along that cheerleaders be selected, not elected to fill thevarsity squad to cheer before the games. In that particular issue of "The Daily Mistake", my head was attached to a white girl's cheerleader body and pasted together and the caption under it read, "Spragin Selected." And it was a big joke about whether or not black cheerleader would ever get [2762] to be selected, quote, unqote, cheerleaders at the University of Mississippi.

And I found that offensive to me personally, and I found it offensive to me morally, and I found it offensive to me mentally.

* * * * *

[2766] Q. Ms. Spragin, I hand you Plaintiff's Exhibit 363 and 364 for identification. Can you tell us what is Exhibit 363?

A. Well, 363 is an excerpt from the Tuesday edition of the April 6, 1986 "Daily Mississippian", written by Kathy Marshall [2767] and Brenda Robinson, entitled Students React To, quote, "Mistake," unquote.

Q. What is the Plaintiff's Exhibit 364?

A. Three sixty-four is the entire edition of the newspaper entitled, the "Daily Mistake April Fool's Day 1982".

Q. Now, I asked you earlier if there was some editions of the "Daily Mississippian" which you found to be offensive to you and other black students and your answer was yes. Are those the editions to which you were referring to?

A. Yes, they are.

Q. And why did you find Plaintiff's Exhibit 364 offensive?

A. As I stated previously, I found it offensive because it took—one of the reasons, personally offensive, it took my head hee and attached it to a white's person's body and has the caption, "Would You Believe", and then it has "Spragin Selected". And I thought that was an insult to us, and what we were trying to accomplish at Ole Miss, trying to get cheerleader selection, because I happen to believe that black students at the University of Mississippi, given the opportunity, can perform just as well as anyone else and can be selected rather than elected to fill the varsity cheerleader squad at the University of Mississippi.

Q. Had you been a candidate for the cheerleader squad?

A. Never in life. The candidates had been Clara Bibbs, and John Hawkins for senior varsity squad. For the junior varsity [2768] squad, I cannot remember the young man's name, but he had served on the junior varsity squad before.

Q. Why did you dind plaintiffs Exhibit 363 to be offensive to you and other black students?

A. I found 363 to be offensive because in it it states, and I quote, "ASB President William Ray said, I think in-

tentionally or not in the "Daily Mistake" there were definitely racial slurs involved. I can understand why some black students were offended. The first time I slanted. I guess it's because I'm a white student and I'm not openly aware of the criticisms that blacks take." End quote.

Q. Why did you find that to be offensive?

A. I found it to be offensive that the president of our student body, someone that the student body, as a whole had elected, was insensitive to the needs of a portion of the student body, that he couldn't understand what we—seven percent at that time of the student body, approximately—found offensive or found, I guess, objective to us, negative to us. And I felt at that point that we were fighting a losing battle if the president of the ASB couldn't relate to seven percent of the student body.

* * * * *

Q. When you were president of BSU, did you raise any concerns about the manner in shich the University treated the black fraternities in terms of funding or housing or whatever?

A. Yes, I did.

Q. What concern did you raise in this regard?

A. I was told by the university that the next available greek fraternity house on Fraternity Row would be allotted to [2772] Alpha Phi Alpha Fraternity. When that house became available on Fraternity Row, it was not given to Alpha Phi Alpaha Fraternity. And Alpha Phi Alpha felt that since the Black Student Union was representing the concerns of black organizations as a whole that it was appropriate for us to adk why they didn't receive a house on Fraternity Row. And we were told that the house was just not available, that it had already been previously allotted prior to Alpha Phi Alpha's claim on the house. And the University then offered a dorm to Alpha

Phi Alpha to purchase, and it's the dorm that's across from the cafeteria. I don't remember the name of it. It's been closed for a long time. It's directly across in fornt of the cafeteria next to—there's what used to be when I was on campus the music hall. I'm not sure if that's still it. But it made a loop right in front of the cafeteria there. And they asked that they consider that. Alpha Phi Alpha fraternity went over and looked at the dorm and inspected it and brought a list of things that needed to bedone in order to make the dorm liveable, and they asked the University if they planned to upgrade this particular dorm so that they could live in it. And the University told them, no, that was their responsibility to upgrade the dorm.

So then, the University said that—mentioned—and I don't know how they intended to do it—but sell that dorm to Alpha Phi Alpha Fraternity. And, of course, Alpha Phi Alpha then asked the price of the dorm and they were quoted an [2773] outrageous fee, thirty—over thirty thousand dollars or something like that in funds that the local chapter couldn't possibly get together. And they haggled over the amount of money and that sort of things, and they also haggled over whether or not Alpha Phi Alpha Fraternity—if they decided to purchase the dorm, would be still responsible for upgrading, and they would.

And, of course, as evidenced, Alpha Phi Alpha, did not get that dorm. Instead, they chose to black themselves on one of the dorm floors in Twin Towers.

Q. Alpha Phi Alpha is a black fraternity?

A. Yes, it is.

Q. Now, during the time when you were a student at the University of Mississippi, were there any black fraternities on Fraternity Row?

A. None.

* * * * *

[2775] **LYDIA SPRAGIN**

BY MR. STEPHENSON:

* * * * *

Q. Isn't it true, Madam, that after the incident, that the University announced that the rebel flag would no longer be accepted as a university symbol?

A. This is true.

Q. And it's also true, is it not, that the University ceased its practice of purchasing the rebel flags?

A. To my knowlede, when I left the University of Mississippi, they had promised me that the ten thousand dollars that they were allotting presently for student activities from student activity fees would no longer be allotted to purchase the rebel flag. To my knowledge, I cannot speak as to whether or not that has been carried out. I graduated August 6, 1983.

Q. Well, it's true, isn't it, that cheerleaders of the University of Mississippi no longer wave the rebel flag?

A. I'm told so.

* * * * *

TESTIMONY OF JOHN L. HAWKINS

[2776] THE WITNESS: My name is John L. Hawkins, H A W K I N S.

DIRECT EXAMINATION

[2777] BY MR. OSBORNE:

Q. Mr. Hawkins, for the record, would you state your race, please?

A. I'm black.

Q. Where are you originally from?

A. Originally from Water Valley, Mississippi.

Q. Where did you attend high school?

A. Water Valley High School.

Q. Where did you attend college?
A. University of Mississippi.
Q. And when did you attend the University of Mississippi?
A. From 1980 to 1984.
Q. What did you major in?
A. Banking and finance.
Q. (Gestures)
A. Banking and finance.
Q. Did you recieve a degree?
A. Yes.
Q. Are you presently employed?
A. Yes.
Q. Where?
A. I'm a sales representative for Proctor and Gamble in their sales manager program.

* * * * *

[2778] Q. And how did the election, your election as cheerleader come about?

A. Well, that's a long story and I would like to lead up to it, if I could.

It all started when I was vice president of the black student body under Lydia Spragin, who at the time was president. And being vice president, there was a committee that had been established called the Chancellor's Committee on Minority Student Concerns. This committee was addressing the concern of trying to get blacks on the cheerleading squad at the University. One person in particular that we all thought of was Clara Bibbs, who had tried out unsuccessfully in the past to become a cheerleader at the University. I knew Clara very well. She was a good personal friend. I asked her to try out for cheerleader again. Upon some [2779] reluctance she did agree to do so, but the problem was that she would need a partner, and she

wanted someone that was athletic enought to be able to do the stunts and also strong enough to lift her.

Q. There were no other people on the squad who fit those qualifications?

A. Well, Clara – Clara was specifically looking for someone black to help her. And in talking with her, she convinced me to assist her in her training. So I learned the students along with Clara, again, only helping – with the intention of helping her to become a member of the squad. However, when tryout time came Clara convinced me to go on and put my name in the pot also to run for cheerleader and I agreed to do so.

The cheerleading process initially was handled by a panel that narrowed it down to the top ten best males and top ten best females and Clara and I were both fortunate in that we both were slected by the panel for the top ten.

At that point, cheerleaders were still being determined by an electoral process at the University. So what that meant was that we would have to go out and actively campaign, knocking on doors, door-to-foor and soliciting votes for people to elect us, if they liked us, I guess, to be cheerleaders.

In going out and campaigning, although I had no intention early on, obviously, of being a cheerleader, I made the [2780] squad. I was elected to be a cheerleader and Clara wasn't, and that's how I came to be a cheerleader at the University.

Q. Were you assisted in your efforts by any of the members of the black faculty at that point in time?

A. Assisted in what way?

Q. In being elected?

A. No. The electoral process, again, was a matter of going out and soliciting votes. knocking on doors and campaigning.

Q. Okay. And after you were elected, did any incidents occur because of something that you either did or refused to do?

A. Well, as the votes were being tallied to determine who would make the squad and who wouldn't, we had a constant tab so we could tell where we were ranking. The squad, if I'm not mistaken, would consist of six people that would be elected, and I was running a close sixth. So when the final vote came in, I ended up being the sixth person. And at that time a reporter—well, there were a number of reporters on hand. One reporter asked me specifically that, if elected to be the first cheerleader, black cheerleader of the University, would I carry the rebel flag, which was a symbol or an item that the cheerleaders had traditionally carried at the University. And my answer to that question was very simple, I told them no, I wasn't.

From that point, things really began to escalate in the [2781] press. The rest is pretty much documented.

Q. When you say things began to escalate, what are you referring to?

A. Well, after the statement of "no" hit the press, I began immediately to receive hundreds and hundreds of letters, some positive and some not positive, some very negative, regarding my status then as the first black cheerleader at Ole Miss. Also involved in much of that mail were death threats and things of that nature.

Q. Did you experience any particular incident near the place where you were living? Did any incidents occur near your residence that were related to the fact that you refused to carry the rebel flag?

A. Well, a number of things happened. I remember a specific incident in which there must have been at least a thousand white students that created a mob around the Phi Beta Sigma House which was my fraternity's house on

Highway Seven, I believe, it is. And the mob supposedly had started out initially as a pep rally, but became a mob. And they started out initially at Bishop Auditorium where they had a couple of black students inside that were really afraid for their personal well being and those students called Lydia for assistance.

But, again, this mob proceeded down Frat Row to the Phi Beta Sigma House where they had become more and more vocal and [2782] were chanting things such as, "We want Hawkins," and "We want Porter Fortune," and we—"Two, four, six, eight, we don't want to integrate," and all this type of foolishness. And there were a couple of other instances also.

I remember specifically when Chancellor Fortune was about to go on record saying that he had—he would disassociate the rebel flag with the University. Oh, I guess about an hour, hour and a half, two hours before hs speech was to take palce, I received a phone call. I lived in Twin Towers at tis time. And I received a phone call and someone—it was—it was a male's voice on the other end—told me that they were going to kill me that day. They said, "We're going to blow your—expletive—away that day."

And by having over the course of time not received any assistance or protection, to my knowledge, from anyone in the administration and after having specifically asked for it, I had to call on Dr. David Hall for assistance. What transpired was that Dr. Hall sent for me and he also got Lydia Spragin and he took us to his home for protection and we used his home as a safe house.

Upon my return back to my dorm room after this incident had transpired, my room was full of water. My dorm room was full of water. What appeared to have happened, had happened, was a trash can, I guess a fifteen, twenty

gallon trash can had been filled with water. And for anyone that's ever been [2783] in Twin Towers Dorm, they know there's a space under each door about that big, one inch maybe, in which the water had been poured into my room. And I knew that this was no accident because on several instances I had returned back to my room and found absurd and violent messages pinned on my door. One guy spray painted a side of the wall. I can't remember specifically what it said, but it was pertaining to me. Again, finding garbage—those same garbage cans filled with garbage, poured in front of my door and the full nine yards.

Q. Now, you mentioned that you stayed at Dr. Hall's house. Is he black or white?

A. He's black.

Q. Was he associated with the university?

A. Yes, he was a professor in the law school. I don't know his specific role.

Q. Now, how many times did you find messages on your door?

A. Sometimes a couple of times a week. It depended upon the level of press thta was going on at that time. But as per mail, I received mail every day. People—I received mail from all over the country. I guess it got to the point where the post office didn't need a specific address or post office box number. All they needed to say was John Hawkins and they knew who to give it to because so much was coming in.

Q. Now, did you think that when you received these threats, that people were merely playing or—did you take the threats [2784] seriously?

A. Oh, I took the threats very seriously. In fact, what I had done on occasion—that's one thing I would have to give Chancellor Fortune credit for, ws that he did provide

me access to him. I went to him and I told him of the situation that existed in terms of the death threats and I asked him specifically for some protection. He didn't provide any for me, to my knowledge. I took it a step further and I went to the Chief of University Police, I believe his name was Mike Stewart, and I shared with him some specific graphics that I had received from the Ku Klux Klan and some other death threats and I asked him for protection also and he told me that he would not provide any for me. And I had shown him minor bruises that I had received from our sporting events in which I had been popped with a golf ball or someone would throw a whiskey bottle from the stand and pop me with it.

Q. Was this during the time you were performing as a cheerleader?

A. Yes.

Q. Were any efforts made by the BSU to provide protection to you?

A. The BSU?

Q. Yes.

A. No. The reason for that is because my primary entity, I guess, for my not only moral support but protection was my [2785] fraternity. And maybe that's why the mob scene, when it transpired, they desired to hit the Phi Beta Sigma House first, knowing that I would be there.

Q. Were you at the house at the time?

A. Yes.

Q. How long did this particular mob, as you termed it, stand outside the house?

A. I can't remember specifically the time. I would say at least thirty minutes, forty-five minutes or so.

Q. Did you call campus security while the mob was outside?

A. I did not, but I do know efforts were made to contact campus police. In fact, they were already there

because they were directing traffic. And it was so funny because a couple of my fraternity brothers—Larry Pittman, is one that I can state specifically—was trying to get into the house because the mob was—had virtually surrounded us. And one of the policemen had treated him pretty cruelly in terms of pushing him literally to the ground forcing him on inside.

The mob wasn't up at that point where he needed to have been treated, I thought, in that way.

Q. Did the security officers do anything to disperse the mob?

A. Not that I could see. And by that, I don't know if they did or didn't, but, again, not that I could see. From what I did see, the mob, I guess after they had made their [2786] statement and shown their force, began to dissipate on their own.

* * * * *

[2788] Q. Did your fraternity make any attempt to secure housing on Fraternity Row?

A. Yes.

Q. Were you successful?

A. No.

Q. What attempts did you make in this regard?

A. I don't know the specific steps. It was discussed in our chapter meeting that efforts were being made for our fraternity to acquire a house on Fraternity Row. Now, this was at the end of my tenure at the University and it was followed up on after I had left the University, so as per the specific on that I don't have that information.

Q. Does the fraternity have a house on Fraternity Row at present?

A. Not to my knowledge, no.

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Nos. 90-1205 and 90-6588

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR. ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX – VOLUME V

MIKE MOORE
Attorney General
State of Mississippi
450 High Street, 5th Floor
Jackson, Mississippi 39201
WILLIAM F. GOODMAN, JR.
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Watkins & Eager
400 East Capitol Street
Jackson, Mississippi 39201
Counsel for Ray Mabus, et al.

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel for the United States
ALVIN O. CHAMBLISS, JR.
North Mississippi Legal Services
1006 Jackson Avenue
Oxford, Mississippi 38655
ROBERT PRESSMAN
Center for Law and Education
955 Massachusetts Avenue, Suite 13A
Cambridge, Massachusetts 02139
Counsel for Jake Ayers, Jr. et al.

PETITIONS FOR WRITS OF CERTIORARI FILED JANUARY 28, 1991 (No. 90-1205) AND DECEMBER 17, 1990 (No. 90-6588)
CERTIORARI GRANTED APRIL 15, 1991

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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* * * * *

TESTIMONY OF STACEY L. BRACEY

[2789] THE WITNESS: My name is Stacey Louise Bracey. Last name B-as-in-boy R A C E Y.

* * * * *

[2790] Q. For the record, would you state your race, please?

A. Excuse me?

Q. Would you state your race?

A. Negro.

Q. Okay.

A. Afro-American.

Q. Are you a student at the University of Mississippi?

A. Yes, I am currently.

Q. And when did you enter the University of Mississippi?

A. The spring of 1983.

Q. What year are you?

A. I'm a senior.

Q. Okay. What is your major?

A. I'm a double major, computer science and English.

* * * * *

[2793] A. Has the BSU sponsored any candidates for election to the student government since you've been a student at the University of Mississippi?

A. Yes, this spring the Black Student Union endorsed s slate, an entire slate of ABS candidates, all of which were white. No black students were running in the ASB government at this point of time. This was the first time this has ever been done by the Black Student Union and because of some of the things that we put into the information sheet, is what we called it, which stated a couple of sentences as to whether the cabdidate had or had not been instrumental in helping the Black Student Union. We chose who we felt were working in the best interests of black students and

there was a lot of problems from that. There was a lot of backlash from that. There were threats to both myself and Phyllis Keyes, who was the President of the BSU at that point in time. There were a lot of negative tones thrown out by the "Daily Mississippian" [2794] which is nothing unusual because they are constantly doing that as far as the Black Student Union is concerned.

* * * * * *

[2796] Q. Okay. Have you or any of the other black students at the University of Mississippi experienced any—have you had any problems in terms of grades you received and in terms of the manner in which black students are treated when it comes to grading and the manner in which white students are treated?

A. Well, myself, I've only had that ne particular incident. Recently—as of then.

Recently, this past semester I had an incident in which I had a death in my family and I missed an exam. I asked Dr. Trott, who, as I said earlier, was Dean of Students, to send letters to all of my instructors. She did. I returned. I went to see my biology instructor and he said, "Oh, I'm sorry, I can't give you a makeup test."

And I said "Okay." And I made various attempts to see [2797] the chairman of the department in which I was unable to see him so this will continue in the fall once I return.

There are—have been various students who have come to me and discussed with me problems that they have had with instructors in the business department, sociology, chemistry, as far as their grading policy is concerned and their testing goes.

* * * * *

[2971] **TESTIMONY OF DR. JOHN MILLET**

* * * * *

DR. JOHN D. MILLET

* * * * *

[2972] Q. Would you relate, please, for the Court your educational background?

A. I was born in Indianapolis. I went to college at Depauw University in Greencastle, Indiana.

My graduate work, my master's degree was at Columbia University in 1935, and my PhD Columbia University in 1938.

1938/39, I was post-doctoral fellow of the Social Science Research Council, and then for two years I worked for the Social Science Research Council in New York City.

In 1941, I joined the staff of the National Resources Planning Board in the Executive Office of the President in Washinton.

Q. And, Dr. Millett, if you would, please, sir, following this relation of your background educationally, would you give a brief overview of your employment history?

A. Yes. That is what I am doing, I am afraid. I joined the Army in 1941-'42, was discharged in 1946.

I became an associate professor at Columbia in 1945 on military leave. I returned to teaching February of 1946, and I [2973] became President of Miami University in Ohio in 1953, served there until 1964.

I became the first Chancellor of the Ohio Board of Regents in 1964, and served there until 1972.

From 1972 to 1980, I was a Vice President of the Academy for Educational Development. I retired from the Academy in 1980.

[2974] * * * * *

Q. You also mentioned, I believe, sir, the Academy for Educational Development.

What is the Academy?

PUBLISHER'S NOTE:

ORIGINAL PAGINATION IS NOT CONTINUOUS.

A. The Academy for Educational Development was a spin-off from the Ford Foundation in 1962 or '63. It is a nonprofit corporation which does research and consulting work. Mostly in the field of higher education, but it also does extensive work overseas that involve elementary and secondary education.

Q. And what were your positions with the Academy?

[2975] A. I was Vice President, Senior Vice President and Executive Vice President, but my role was to run the higher education program.

[2976] * * * * *

Q. Could you relate several representative examples of your endeavors since 1980, please?

A. I have done work for the Ohio Board of Regents, for the Minnesota Higher Education Coordinating Board, for the State of Pennsylvania in establishing a new State university system there.

I have done—I have done a major study for the Ford Foundation. I have been a consultant to the Bush Foundation in St. Paul.

I have done work with the University of Louisville, with [2977] Mississippi State University and Columbus Technical Institute, and I have conducted seminars at the University of Nebraska, University of Tennessee, University of Kentucky, Michigan State, Maryland Board of Higher Education, the University of Oklahoma, and I did two seminars for the Mississippi Board of Trustees.

Q. You mentioned a major study, Dr. Millet, for the Ford Foundation.

Could you briefly describe the scope of that study?

A. I had a grant from the Ford Foundation to make a study of relations and write a work about relationships between State Boards of Higher Education and Public Institutions of Higher Education.

Q. Do you have or have you served on the Board of any institution of higher learning, Dr. Millett?

A. I have been a member of the Board of Trustees at my college, Depauw University.

I have been a trustee of Educational Testing Service two different terms. I have been a Trustee of a College Board.

Q. Do you hold any honorary degrees?

A. Yes.

Q. How many?

[2978] A. Twenty-two.

Q. Have you written or published in the area of Higher Education?

A. Yes.

Q. Could you relate briefly, sir, the subject matters addressed and teh extent of your publications?

A. I am the author of twenty books, and I think roughly half are in the field of public administration, which is my scholarly discipline, and half had to do with State institutions of higher education in State Government, hence, the field of higher education.

[2979] * * * * *

MR. STEPHENSON: Your Honor, at this time we tender Dr. Millett as an expert in the area of higher education, Governments and administration.

THE COURT: Does the Plaintiff wish to voir dire on this witness?

MS. YOUNGER: Not for the United States.

MR. PRESSMAN: No, Your Nonor.

THE COURT: He will be accepted, and you may continue your examination.

[2981] * * * * *

Q. You have mentioned the term governant several times already this morning, Dr. Millett.

In the context of public higher education, what is meant by the term "governants" or "governments structure" ?

A. I mean the State Government administrative structure, which is established by State Governments for providing both advice and action on such matters as master planning and institutional missions, institutional programs, the financing, access, and the whole general problem of relationships to multiple institutions or campuses of higher education.

Q. Are these structures the same in all states?

A. No, they are not. They vary substantially from one state to another. There are some common characteristics.

Q. Well, would you describe, sir, the common characteristics of how these structures may differ?

A. Well, essentially, State Boards of Higher Education are of two kinds.

[2982] One we call a statewide Governing Board and there are such boards in twenty-two states of the United States. These states are quite varied.

Mississippi, of course, is one of them. Here in the South, this is the organizational structure and in North Carolina, in Georgia and in Florida.

Interestingly enough, four out of six states in New England have statewide governing boards; Maine, New Hampshire, Rhode Island and Massachusetts.

There is a statewide governing board in West Virginia and a statewide governing board in Wisconsis, and there is a statewide governing board in North Dakota, South Dakota, Montana, Iowa, Nebraska, Arizona, Nevada, Idaho, Oregon, Alaska and Hawaii.

[2983] * * * * *

Q. Have you examined, air, the government structure in the State of Mississippi for public institutions of higher learning?

A. I did this as a part of the study I did in 1978/79.

Q. Well, would you describe the structure briefly, please, sir for the Court?

A. Well, there is a Board of Trustees of State Institutions of Higher Learning, which is made up of twelve members, plus a special member called the LeBauve trustee.

[2984] The members are appointed for twelve year terms. The Board was established by constitutional rescription in 1944, although its legal origins go back before 1944.

There are eight individual campuses, plus the University of Mississippi Medical Center at Jackson, which really makes a ninth campus in the public system of higher education institutions.

The Board in this state has no authority in relation to two year institutions. Some governing boards do.

The governing board in this state—I have emphasize, the governing board in this state has maintained a relatively small administrative staff and has given very substantial management authority to each of the individual institutions.

Q. Dr. Millett, do you have an opinion as to the educational soundness of the government structure of the Mississippi Public Institutions of Higher Learning?

A. Yes. I believe—

Q. Would you answer it in the record, sir.

A. I am sorry. I believe that the structure in this State is a very sound structure.

It is one comparable, as I have said, to that which exists in twenty-one other states.

It has exercised its authority with a good deal of caution and care, it seems to me, over the years that I have known anything about this Board, and it is a Board which is—has

had different problems in connection with the available resources for the various [2985] institutions.

Q. Have you reached any conclusions, sir, with respect to the Mississippi Board as a form advantageous or disadvantageous to State Government?

A. I think this Board is advantageous to State Government.

Q. Would you explain why, please, sir?

A. Well, it is advantageous because of the authorities which a governing board has over a public institution.

As I said before, it is both the governing board of each individual institution, and it is the State Board of Higher Education at the same time. It has a dual role to perform.

It does have authority to define missions, which a coordinating board does not have. It can only suggest.

It has authority to allocate available resources as equitably as is possible. It has the role of discontinuing programs or decided to be not of a desirable quality or not to be necessary to the needs of the State and students.

Q. Have you reached any conclusions, sir, with to the institutional autonomy provided by the Board of Trustees?

A. Yes. I think this is very important. I think this is a virtue of a Mississippi structure that is not generally appreciated some times in this state and sometimes out of this state.

Q. Would you explain why, please, sir?

A. Well, autonomy gives a great deal of discretion to the [2986] individual institutions in their use of such resources as are available. It gives to the institutions options in connection with the solicitation or obtainin of outside resources other than those from the State Government.

It gives a good deal of incentive to each individual institution to seek outside sources of income.

Also it is terribly important that management autonomy is economical.

* * * * *

Q. Dr. Millett, in the context of institutions of higher learning within a system of higher education, what is meant by the term mission?

A. Well, mission defines the general purpose and scope of an individual institution of higher education. It defines purpose and scope in relation to instruction of students, in relation to [2987] research and in relation to public service.

Could you explain the significance of instructional program in the context of mission?

A. Well, the Federal Government, Office of Education or Department of Education classified all institutions by purpose into five categories.

* * * * *

The labels are doctorial granting, comprehensive, general baccalaureate, specialized, and two years.

Those are—There are five principle classifications.

Will you pardon me if I say that in the first study I ever did of higher education was done as an associate of our American [2988] universities in 1949 to 1952. I prepared a similar classification systems on which all existing classifications are built.

* * * * *

Q. What is the bases for the classification?

A. But the easiest way to look at it is that it has to do with the level of degrees that are granted, and has to do with the fields in which the degrees are granted.

Out of about fifteen hundred public institutions of higher education in this country, there would be about a hundred doctorial granting institutions, there would be between three hundred and fifty, four hundred comprehensive institutions, and about a hundred general baccalaureate institutions, and there would be around nine

hundred something two year institutions that makes up the present structure of public higher education in America.

* * * * *

A. Some institutions have a major research mission and in other instances the research is more general in scope.

There is a phrase known as or institutions called major universities in research in this country, and there are about sixty major research institutions that fit this definition.

Again, to really receive the designation, it is a – It is – A research university would be one that has about twenty million dollars or more and separately budgeted resources in any one year.

[2990(a)] * * * * *

Q. Could you relate your understanding of the Mississippi institutions' missions?

A. Well, I thought they were quite well defined in that November 1, 1985 statement.

I think on a university level, they are educationally sound and efficient.

Q. Could you tell me, please, sir, your understanding of the missions, if your would?

A. Yes. There are three doctoral granting institutions, four regionals and I believe one urban university in Jackson.

[2991] * * * * *

TESTIMONY OF DR. JOHN D. MILLETT

Q. Dr. Millett, during your review of the various institutions in the State of Mississippi, did you make a determination as to whether or not there were some institutions identified as black institutions and others as white institutions?

A. Yes.

Q. All right. Now, what is the black institution?

A. Well, there are three predominantly black institutions in this State, Alcorn, Mississippi Valley and Jackson State.

Q. Do you believe that all black institutions should have the same mission?

A. No.

Q. What do you believe the mission of a black institution to be?

A. Well, it has a mission in connection with racial identification, but it also has a mission in terms of its instructional [2992] programs, and that may differ from one institution to another.

Q. Is it your contention that black institutions should continue to exist?

A. Yes.

Q. Is it your contention that predominantly white institutions should not be desegregated?

A. No.

Q. Do you believe that white institutions should be comprehensive universities?

A. Some of them are. I would, again, depend upon the needs that are in the state and the resources that are available for support buildings, those instructional programs.

Q. Could you identify the black institution in the State of Mississippi, which in your opinion is a comprehensive university?

A. I think it would be Jackson State at the present time.

Q. All right. I believe you testified –

A. And I am talking now about the federal definitions, not the State Government definitions.

I want to be sure of that. I want to be sure that that's understood.

Q. Is there any educational need in attracting white to predominantly black institutions?

A. Well, I assume that they are the same needs in a predominantly black institution as there are in—in attracting white students as there are in a predominantly white [2993] institution in attracting black students.

An effort has to be made. The students have to be made to feel that they are welcomed and there has to be a general atmosphere of cooperation and harmony on the campus in order to have an effective instructional program.

Q. Is it your contention that black institutions should remain predominantly black?

A. Yes, I think so for the time being. As long as it is understood that blacks have access to the predominantly white instructions and the black student have a choice, either between the predominantly white institution or predominantly black institution.

If you believe in student choice, then I think there is a place in the foreseeable future for the predominantly black public institution.

There is a book that I want to call your attention to by Jacqueline Flemming called *Black Colleges*.

Dr. Flemming was a graduate of Bonert and has her doctor's degree from Hardin. And Dr. Flemming's conclusion in this book Black Colleges, was that black colleges provide a better residential, social, academic atmosphere for many black students than they receive in a predominantly white institution.

[2996] of Mississippi, urban university institutions?

A. I think there is a prospect that Jackson State may become an urban university over a period of time. I doubt that it would meet my definition of an urban university yet, but I have not looked at the institution recently.

Q. When did you last review the institution?

Q. It would be about 1984.

[3001] * * * * *

Q. And their designation in the last ten, you think, would be totally independent of the kinds of programs they were provided and the resources they were again before the last ten years?

A. I assumes that there are historical factors at work here. There always are in every institution that I have ever visited.

Q. In fact, do you recall that in your outline of missions that you had at the time of your deposition, you had a sentence that said, "The role and mission of institutions in every State are a matter of historical development" ?

A. I think I just said that. I know that to be true in Ohio.

* * * * *

Q. Isn't it a fair characterization of the Board admissions standards that they have reflected that one mission of the system of higher education is to give access to students who are less well prepared, but have—Place that mission primarily at the historically black institutions?

A. I assume that there is nothing that prevents white [3009] students from taking advantage of historically black institutions.

Q. But do you agree with the characterization I made?
A. Yes.

[3010] * * * * *

Q. Would you agree that one affect of the 1981 mission statement was to pretty much lock in the status of the eight universities as they existed at that point in terms of the distinction between doctorial and the other kinds of institutions that you have identified?

A. The mission statement of 1981 did largely confirm what was the existing structure of the State with certain modifications.

Q. And make it difficult to move beyond that structure?

A. Yes.

Q. You refer to the importance of harmony on the campus?

A. Yes

Q. Would you see harmony on the campus for black students who were at a historically white institution as important in terms of that institutions ability in the future to increase its percentage of black students?

A. Yes.

* * * * *

TESTIMONY OF LUCY MARTIN

[3047] reflected by how well our needs have been funded in the previous years.

This year as part of your legislative presentation, we attempted to track what our appropriations had been over the past six or seven years and to put it more in perspective and to eliminate the effects inflation had on our budget, we expressed these in terms of constant 1985 dollars,

which basically showed if we were funded the total request that we had made of the legislature of the hundred and seventy-seven million dollars in terms of constant dollars, we still would not be at the level we were in 1979.

Q. Do you have Board 358 with you?
A. Yes, I do.
Q. All right.
A. This is a graphic–
THE COURT: Get me that document.
BY MR. STEPHENSON:
Q. For the record, would you indicate, please, ma'am, what this document intended to reflect?
A. This is a comparison of our actual appropriation, which is the line graph with the square versus done and the 1985 appropriation. We translated 1979 through 1987 in terms of 1985 constant dollars.

The constant appropriation is represented by the X, and this shows in our appropriation in 1979 in terms of the actual [3048] dollars was approximately a hundred and ten million dollars.

If we expressed that hundred and ten million in terms of 1985 constant dollars, it was just under a hundred and forty-nine million dollars in reality.

As we moved to 1987, the square up there shows our actual request was approximately a hundred and seventy-eight million dollars, which in terms of 1985 constant dollars would be approximately a hundred and fifty million.

We received a hundred and fifty-five million of the hundred and seventy-eight million, which probably without doing all of the calculations would be approximately a hundred and thirty-two to a hundred and thirty-five million in actual 1985 dollars, which would be less than that hundred and forty-nine back in 1979.

Q. Okay.

A. We have basically not kept up with the inflation during that period by a considerable margin.

MR. STEPHENSON: Your Honor, we offer Board 358 into evidence.

THE COURT: All right. If there is no objection, it will be received.

MR. STEPHENSON:

Q. Ms. Martin, have you examined State appropriations for higher education over time as a percentage of the State general fund?

[3055] * * * * *

Q. Does the funding formula include any factor relating to earlier patters of funding?

A. I'm not sure.

Q. Okay. Let me be more specific.

A. Okay.

Q. Does it include any factor based on the premise that earlier funding was not equitable to historically black institutions?

[3056] A. Not specifically in that manner, no.

[3123] * * * * *

TESTIMONY OF ROY L. LOVVORN

ROY L. LOVVORN, having been first duly sworn, was examined and testified as follows:

* * * * *

Q. Where do you live, please, sir?

A. I live in Raleigh, North Carolina.

Q. When and where did you receive your higher education?

A. I got a BS degree in agriculture from Auburn University in 1931. I received a Master's degree in soil science from the University of Missouri in 1933. I obtained a PhD in agriculture agronomy, but with an agronomy/botany joint major at the University of Wisconsin in 1942.

[3124] Q. Starting in 1933 when you get you Master's degree and going up to 1976, tell us what has been your professional employment.

A. Well, from the time I got my Master's degree in 1933 until 1936, I lived in Missouri and served with the extension service for a year and a half and with the soil conservation service for a year and a half.

In 1936 I joined the faculty at North Carolina State University as an assistant professsor of agronomy and continued there in teaching and research in agronomy until January of 1950.

At that time, I joined the agricultural research service of the U.S. Department of Agriculture and was stationed in Beltsville, Maryland, as the agronomist in charge of the division of weed investigations.

I returned to Raleigh and North Carolina State University in September 1953. I spent one year as director of instruction in the school of agriculture, and then the following year, 1955, I was named director of research in the school of agriculture at that institution and remained there in that capacity until 1969.

At that time I joined the USDA again, this time as the administrator of the cooperative state research service, an agency within the the department of agriculture in Washington, where I worked until I retired in June of 19676.

Q. As director of research, school of agriculture, North [3125] Carolina State University from 1955 to 1969, what were you duties and responsibilities?

A. As director of research, in that capacity I was responsible for all the research and agriculture, home economics and forestry. It's normally referred to as the director of agricultural experimentation station, as it's now called, the for the state.

Q. Is North Carolina State University a land grant institution?

A. Yes.

Q. How many such institutions are in North Carolina?

A. There are two. There's North Carolina State University and North Carolina A&T University.

* * * * *

[3126] Q. Would you describe for the Court the cooperative state research service and its function?

A. The cooperative state research service is the agency designated by the secretary of agriculture to administer the funds that are appropriated by the congress to support agricultural research, forestry research and home economics research at the land grant institutions in this country.

Q. Now as administrator of the cooperative state research service of the United States department of Agriculture from 1969 to 1976, what were your duties and responsibilities?

A. Well, as the head of the agency, President Truman used to say, "the buck stops there." I was the head of it or the administrator. It was my responsibility to see that the responsibilities that the department of agriculture had in administering the federal funds that go with the land grant colleges were administered according to the law and administered with the—within the partnership framework with the land grant institutions.

Q. Between 1969 and 1976, did you have any responsibilities with the United States congress?

A. Yes, sir.

Q. Would you explain?

A. My main contact with them was to appear annually before the appropriations committee for agriculture, that is both in the House and in the senate.

[3128] Q. During those years when you were administrator of the agency, did you have any direct dealings with Mississippi State University?

A. Yes. As the administrative agency I had direct dealings with every land grant institution. And I might add that I have visited every one of them in all the fifty states. And certainly during that time I was at Mississippi State on several occasions.

[3137] * * * * *

MR. GOODMAN: If Your Honor please, we tender Dr. Lovvorn as an expert in the field of agricultural and forestry research.

* * * * *

THE COURT: All right. This witness will be accepted as qualified to give opinions in that field.

[3142] * * * * *

Q. Dr. Lovvern, do you have an opinion as to the criteria for an educationally effective and efficient state program of agricultural research?

A. Yes, I do.

Q. And what is your opinion as to the criteria?

A. Well, I've jotted down some notes here. May I use those?

Q. You're entitled to, yes, sir.

A. I can state it more concisely than I would do if I ramble along. I come out with about something like this: One, develop a mechanism for identifying research needs.

Two, develop an organizational structure for responding to those needs.

And, three, to develop a state-wide organization with one central point of responsibility and control.

Four, develop a program consistent with state and national funding policies.

Five, develop a personnel policy for recruitment and retaining a competent staff.

Six, develop a policy of clearly cut lines of responsibility at all levels within the organization.

Seven, develop a working relationship with the other state and national organizations.

[3143] Eight, to develop an attitude among the staff towards service to the citizens.

The reasons I put the last one in there, the whole philosophy of the land grant system is of service to the people. And you've got to have people with that kind of an attitude if they are going to perform in a way that's expected.

Q. Following up on your assignment in connection with this case, have you made an evaluation of the agricultural and research—agricultural and forestry research program in Mississippi?

A. Yes.

Q. Would you tell the court the results of that evaluation, your conclusion?

A. Well, based on those criteria I just enumerated and on our visits to these campuses, plus our other associations with them during my whole agricultural tenure, I have be very much impressed by the research management or the structure for research, as I have observed it, in the state.

Q. Dr. Lovvern, do you have an opinion as to the effects of that program on the quality of educational opportunity for students at Mississippi State University?

A. Yes, I have an opinion, yes.

Q. And what is that?

A. Well, at Mississippi State as well as the other land grant institutions, there is a—there is an advantage that

students have by virtue of being taught by professors, by instructors that [3144] are engaged both in research and in teaching. So on the one hand they are subjected to a greater variety of instructors, and on the other hand these instructors are, generally speaking, are more up to date on what's going on in the research world than they might not otherwise be, and so students benefit from that association.

And, of course, also a great many of them, by virtue of that arrangement, have some summer employment. That was true in my own case. I suspected I'm—my professional direction was pretty largely determined that by the fact that while I was an undergrad student I worked each summer for a research professor and he was instrumental at least in encouraging me to go on to do graduate work and I came to wind up where I did, and I consider that a positive influence.

Q. Do you have an opinion as to the effects of the program on the quality of educational opportunity for students at Alcorn State Univerrsity?

[3145] * * * * *

A. Well, to a certain extent what I said about Mississippi State would be true there. There is an additional advantage that Alcorn would have that Mississippi State does not have and that is in a smaller place like Mississippi where the classes are smaller, you get more individual counseling and more personal attention and that would be a positive influence that you wouldn't have at a larger institution. So I would say those somewhat offset each other. The advantages I enumerated earlier for Mississippi State would be an advantage at Alcorn, but would not be quite as pronounced at Mississippi State.

On the other hand, the additional advantage of smaller classes and more closely associated with the professors and

more counseling would be a distinct advantage over a larger institution.

Q. Dr. Lovvern, do you have an opinion as to whether or not the program in Mississippi in consistent with the policies and practices of the United States department of agriculture in the field of agricultural and forestry research?

A. Yes.

Q. What is that opinion?

A. Well, it's – I would say that it's very much in line with the policies of the U.S. government. If I hadn's thought so, I [3146] would be on a very defensive position because I administered those funds before I ever came here. But I think there are two or three reasons I would say that.

Q. Okay?

A. In the first place, these institutions, as well as the other states that have two land grant colleges, they submit an annual program of work that's jointly signed by the director of agriculture at Alcorn and the director of the experiment station at Mississippi State. They jointly submit that to Washington annually.

Secondly, station reviews or institutional reviews that CSRS does among its client institutions are conducted periodically at both of these institutions and those reports I have looked at and they are favorable to the set up.

And, thirdly, the leaders of the research program both at Alcorn and Mississippi State are people that are recognized as national leaders and participate in national committees. I know Dr. Foil has been a member of the experimentation committee on organizational policies, which is a national organization. And I'm not sure about Dr. Donald, but he would have – be privileged to serve in that capacity. So the answer to my question is yes.

• • • • •

[3167] CROSS EXAMINATION

Q. All right. Now, Doctor, could you tell us when Alcorn State University got its first direct federal funding?

A. For research?

Q. Under the federal 1977 Act, sir.

A. Well, I just asked you –

Q. It was implemented in 1979. You can tell us what that is.

A. I was asking for clarification.

Q. Yes, sir.

A. Your question, when did they get their first –

Q. Direct federal funding.

A. For research?

Q. For agriculture and research extension. Direct.

[3168] A. They got their first director in – the 1977 Act, I believe.

• • • • •

Q. Is it not true, sir that from 1878 until 1977, ninety-nine years, that Mississippi State University had received direct funding at least every year that it – would you agree with that or you disagree? Or just tell us.

A. Well, I would – what was your time frame again now?

Q. The enabling legislation 1878 until 1977, almost a hundred years, that Mississippi State had received direct funding every year from the federal government or every year – yes.

A. Well, the Hatch Act was passed in 1887 so the State of Mississippi has received research funds continually since that time, if that's the answer to your question.

[3181] • • • • •

Q. On your conclusions on this researching, I don't know what it is, can you just tell us how Alcorn State University fits into the overall scheme of making the state bet-

ter for all people? I think your conclusion spoke to that in a more technical sense, but –

A. Yes, the – the Mississippi State legislature in 1971, upon the recommendation of the presidents of both institutions, created a branch experiment, a branch experiment station at Alcorn State University, which meant that the research at Alcorn State University is now an integral part of the Mississippi agricultural experiment station and which, in my judgment, was a very forward kind of legislation.

Q. Uh-huh.

A. And I consider it a model for other states where they have two land grant institutions within the same state.

Q. Uh-huh. Now, you stated that it's model and it's an excellent. I think your – there's an excellent cooperation between two institutions at both the administrative level and among the scientists and you basically say this is a model for the nation to take a look at. Is that not correct?

A. In the states that have two land grant institutions.

Q. That's correct. Two land grant. Okay. Now, but when we asked you, sir, to identify the role of Alcorn State and the overall state plan, you were general but you were never specific. Now, let me give you an opportunity. Can you just be a little more precise in terms of the role and scope of Alcorn, in the –

A. No, because I feel very strongly that that's a decision that Mississippi needs to make.

Q. Okay.

A. They have the mechanism – within the experimental station director's office, they have a mechanism for identifying and

[3253] • • • • •

TESTIMONY OF DR. LLOYD DAVIS,

• • • • •

[3254] Q. Where do you live, please, sir?

A. I live in Great Falls, Virginia.

Q. When and where did you receive your higher education?

A. I graduated from Cornell University in New York with a B.S. in agriculture in 1942. I received a Master's degree from Cornell in 1947, and a PhD from Cornell in agricultural economics in 1951.

Q. From 1947 until 1980, what was your professional employment?

A. If I might go back a year, I became an Assistant County Agent in Wyoming County, New York in 1946, I believe the year was.

I resigned that job to return to Cornell to get a Master's degree in agricultural economics. After completing that, I became a professor of public speaking at Cornell.

After two years, I decided that was not my future. I resigned to get a doctorate degree in agricultural economics at Cornell.

Following completion of that in 1951, I became a professor of agricultural economics at Cornell, designed primarily to be an extnesion specialist in agricultural [3255] economics. My specialty was fruit and vegetable marketing and fruit and vegetable farm management.

In 1956, I resigned that position to become Chief of the Fruit and Vegetable Marketing Branch in the Federai Extension Service, USDA, Washington.

1959, I went to the University of Massachusetts as Director of the Cooperative Extension Service.

1962, I returned to Washington as Deputy Administrator of the Extension Service in the Department of Agriculture.

A year later, I became Administrator of the Extension Service. 1970, or 1971, I am not quite sure, I left that position to become Director of the Science and Education Staff in the Department of Agriculture.

This is the staff in the Secretary's Office concerned with coordinating the research planning of many agencies involved.

1973, I retired from the Department. There followed a period of eighteen months during which I built a house, wrote a book and did a few other things, and then became Executive Director of the National Advisory Council on Extension and Continuing Education, which is an advisory council set up under the Higher Education Act and administered at HEW.

[3256] * * * * * *

Q. Who are the parties to a program of Cooperative Extension, to a State program of Cooperative Extension?

A. Cooperative Extension is a cooperative venture between the United States Department of Agriculture and the land grant colleges and County Government, jointly financed through the United States Congress, State Legislature and County Government.

They are administered by land grant colleges in cooperation with the U.S. Department of Agriculture.

[3383] * * * * *

Q. When you did your analysis, did you consider [3384] the history of the—did you consider whether or not there were any historical inequities between funding received from the State by the traditionally black universities as opposed to the traditionally white universities?

A. By historic, if you mean prior to, say, 1980, I really did not. The date analyses which I did—really I did most of that from 1980 forward. If you want to say historically did I look back into the '40's, '50's and '60's, I did not. I looked at the formula and its application, really from 1979, 1980 up until the current time.

[3283] * * * * *

Q. Do those 1890 programs duplicate 1982 programs?

* * * * *

[3284] Q. Do you remember the question, sir?

A. I think so. The legislation under which the funds are provided to the 1890 institutions requires that there will be a coordinated plan, jointly submitted by the 1890 and 1862 institutions in each State.

The purpose of this is to help to assure that there will not be duplication. A part of the review process each year by the Federal Extension Service is to ensure that that requirement of Congress is carried out and that these programs are truly supplementary to one another rather than duplicatory.

[3286] * * * * *

Q. Dr. Davis, do you have an opinion as to the purpose of a State Cooperative Extension Program?

A. Yes, sir.

Q. Would you tell me what that opinion is, please?

A. Perhaps the best way to state that purpose would be to quote the Smith-Lever Act, which says that the purpose is to aid in diffusing among the people of the United States useful and practical information on agriculture, home economics and subjects related thereto and to encourage application of the same.

Then the Act goes on to say that Extension shall consist of instruction and demonstration in agriculture, home

economics and subjects related thereto for people who are not resident at or members of colleges and universities.

That has been interpreted over the years as meaning that it cannot be instruction that gives college credit. The funds cannot be used for college credit [3287] instruction.

Another way to define this purpose would be to look at what has been said over the years in the Congress as to what they expect the Extension to do, and they have made it clear that the purpose is to help farm families improve their farm operations, to help farm related businesses to improve their operations, to help people gain knowledge to improve family living and gain knowledge to apply in a role as citizens to improve rural community life.

[3295] * * * * *

Q. Thank you, sir. Now, have you undertaken to make an evaluation of the State Cooperative Extension Program in Mississippi?]

A. Yes, sir.

Q. And would you tell us, please, sir, the results of that evaluation?

A. In relation to these criteria, the Extension Programs in the State of Mississippi rate very well.

I could comment briefly on the relation of those programs to some of these criteria.

[3296] The Comprehensive Statewide Educational Program. It is comprehensive. It deals with a wide range of subjects that are important to agriculture and family living in the State of Mississippi. It is comprehensive also in the sense that it involves the appropriate scientific disciplines in that educational program. Comprehensive in another sense in that it is coordinated, and comprehensive as mentioned in the Farm Act, coordinated and comprehensive in cooperation between the two institutions involved.

It does integrate knowledge from many disciplines. A wide range of scientific fields that are important to farmers in making decisions and taking action. The many fields in which research is conducted by the USDA, by Mississippi State and by Alcorn University.

The close coordination exists with the research programs of the universities and the USDA. We have the specialists personnel, about a hundred of them with detailed scientific training in those fields, who are housed on the campus and in close communications with their research personnel and some are located in the field where they are close to branch experiment stations.

It is indeed close coordination with research programs and the application of research results.

[3297] Coordination with other programs of the USDA has been excellent. For example, there is a new Conservation Reserve Program that has been enacted by Congress.

The Extension Service accepts the responsibility of informing the farmers about that law, the options they have under it and the possible consequences of participation.

They carry on that kind of function regularly as there is a national need and national responsibility to do so.

The systems for involving people, the people served in program planning and evaluation are well developed. The Director has a statewide committee of citizens who are knowledgeable about the many facets of our program and the needs of people in relation to those programs which he consults in his responsibilities.

Each county has advisory councils and committees with people well knowledgeable on the needs of people and who see these from different points of view. Those committees are extensively used in planning the programs and helping to carry them out and evaluating the results.

The program emphasis in staffing is indeed appropriate to the needs of the people. This [3298] involvement of the people themselves in the planning process helps to assure that we have the kind of emphasis appropriate to this State within the national responsibilities.

As I have said, programs are conducted without discrimination based on race, religion, and national origin.

The Court in the *Wade* case after considerable study reached that conclusion. The current data on participation of the people in the programs reaffirms that, the numbers of people who are participating in very close proximity to the percentages of those people in the total population.

I can cite other evidence that indicates that this is the case.

Q. Thank you.

A. And a high degree of credibility, obviously. There are hundreds of thousands, perhaps more people in the State who are relying on Extension educational programs for important information, who consider it important to their businesses and their lives.

Q. One final question, please, sir. Do you have an opinion as to whether or not the Cooperative Extension Program in Mississippi is consistent with the policies and practices of the United States Department [3299] of Agriculture in the field of Cooperative Extension?

A. Yes, I do.

Q. And what is that opinion?

A. My opinion is that it is indeed consistent with the policies of the Department of Agriculture. I have seen nothing that is inconsistent with the policies that I know of.

The whole process of program planning, review, evaluation in which the Department is involved as a partner with the State helps to assure that this is the case.

I can speak from experience in Washington that when we have observed situations where it was not the case, we have brought these to the attention of the State Director and discussed these and reached some adjustments to make them the case.

[3334] * * * * *

TESTIMONY OF DR. JOSEPH JOHNSON

THE COURT: All right. Dr. Joseph Johnson, having been first duly sworn, was examined and testified as follows:

THE WITNESS: My name is Joseph E. Johnson.

DIRECT EXAMINATION

* * * * *

Q. Would you state your address and place of employment for the record, please, sir.

A. My home address is 5334 Riverbriar Road, Knoxville, Tenneessee. I'm employed by the University of [3335] Tennessee.

Q. What's your position with the university?

A. Vice President for Development and Executive Vice President.

* * * * *

MR. STEPHENSON: Your Honor, we tender at this time Dr. Johnson as an expert in the area of higher education administration with emphasis on higher education finance.

* * * * *

THE COURT: Very well, he will be accepted [3345] as a witness qualified to give an opinion of higher education administration and finance.

[3347] * * * * *

Q. Dr. Johnson, with respect to the findings you made in your 1984-85 study, sir, would you first relate the findings you made in relation to your Southern Regional Education Board comparisons.

A. The – What I was doing in making the Southern Regional Education Board comparison, again, was to see how the funding in Mississippi in total and by type of institution related to normative date within the South for like institutions.

Q. If I could interrupt you right there, what do you mean by like institutions, please, sir?

A. Like institutions, institutions that are alike or somewhat alike in terms of role and mission. Is the institution – If you got an institution in Georgia [3348] that is – that's primarily undergraduate, do we have institutions in Mississippi that are primarily undergraduate, and how do they compare in funding. Or if you got an institution that's more comprehensive in Mississippi, it would be akin to a University of Kentucky, how does that institution in Mississippi compare with that kind of institution in terms of role and mission, public service, research, instruction and so forth.

Q. And if you would continue, please, sir, with respect to your findings in this area.

A. What I found was, one, that the State of Mississippi in relation to its ability income-wise as a state, made a good effort, a strong effort, within the region in its support of higher education as an effort.

What I found in terms of total dollar support for higher education, the State of Mississippi did not rank well. It was doing well with what it had, but its resources were limited, and still are, I assume.

Then in looking at the various types of institutions, found that when we took the – In this state, as probably has been stated to the Court previously, you have three

categories or groupings of institutions; The comprehensive, group one; the urban, group two; and the regional, group three.

I found in reviewing the date that the comprehensive [3349]institutions in this state fair worse than any other group generally when compared with like institutions in the South. In other words, the funding process in Mississippi left those comprehensive institutions further behind their peers, their like institutions in Arkansas and Georgia and Louisiana and so forth than was true of the case of the regional institutions.

The regional institutions, looking at 1985-86 date, tended to be financed better than the regional averages. The comprehensive universities in 1985-86 were financed at a level below like institutions.

Q. Dr. Johnson, looking at your report, Board Exhibit 347, page two, what were your specific findings with respect to the percentage relationships when you made the peer institution comparisons?

* * * * *

A. Okay. Page two. What we found at that time was that the Mississippi State University and University of Mississippi and Southern Mississippi, when considered as a group, were more than fifteen percent below the southern regional average for like institutions. Per student appropriation at Jackson State was at that time – Well, in 1985-86, was nine percent above the regional [3350] average for like institutions. And the per student appropriations for the four regional universities – Alcorn, Mississippi Valley, Mississippi University for Women and Delta – Were more than twenty-five percent above the southern regional average for like institutions.

* * * * *

Q. Okay. Dr. Johnson, when were you first contacted with respect to this litigation?

A. In 1986, fall.

Q. Okay. And what was your assignment, please, sir?

A. I was asked to do not a great deal different than what I did in 1984-85. I was asked to look at the formula process for the state of Mississippi's publicly aided Institutions of Higher Learning and review that formula process and offer my views and be in a position to offer my views as to the educational soundness of that formula.

[3365] Q. Dr. Johnson, do you have an opinion, sir, as to the educational reasonableness of the formula funding process in Mississippi today?

A. The formula used in Mississippi is based on sound educational principles. It is a formula that recognizes differences in the roles and missions of institutions and it – and it makes a distinction between those institutions that are largely undergraduate and those institutions that are largely undergraduate and those that have graduate programs. It makes a distinction between those institutions that may be heavily oriented toward engineering versus those that may be heavily oriented toward the liberal arts.

It deals with those institutions, it groups the institutions in terms of role and mission as defined by the Board in Mississippi. And for those reasons, I think the formula is a soundly based process. It's based on sound academic principles.

* * * * *

[3383] Q. When you did your analysis, did you consider [3384] the history of the – did you consider whether or not there were any historical inequities between funding received from the State by the traditionally black universities as opposed to the traditionally white universities?

A. By historic, if you mean prior to, say, 1980, I really did not. The data analyses which I did – really I did most of that from 1980 forward. If you want to say historically

did I look back into the '40's, '50's and '60's, I did not. I looked at the formula and its application, really from 1979, 1980 up until the current time.

[3417] **TESTIMONY OF DR. AUBREY K. LUCAS,**

* * * * * *

[3418] Mississippi, and I attended the University of Southern Mississippi as an undergraduate and finished there in 1955.

I stayed at the University for a master's degree, and during that time I worked as an assistant in the reading clinic, at what was then Mississippi Southern College.

In 1956, I taught at Hinds Junior College in the English Department, and then in 1957, I returned to the University of Southern Mississippi as Director of Admissions and Assistant Professor of Education.

In 1963, I was appointed Registrar at the University of Southern Mississippi and Associate Professor of Education.

In 1969, I was appointed Graduate Dean at U.S.M. and Professor of Education.

IN 1971, I went to Delta State Univesity as President, and in 1975, returned to the University of Southern Mississippi as President and Professor of Higher Education.

Q. And you are now President of the University of Southern Mississippi?

A. That is correct. You asked for the educational history.

I earned the Doctorate in Higher Education at Florida State University in 1966.

[3422] * * * * *

Q. Dr. Lucas, you mentioned a minute ago the policy and the Plan of Compliance, I believe, did you not?

A. Yes.

Q. Who is responsible for enactment of that policy and how is it transmitted throughout your institution?

A. Well, the Plan of Compliance was developed in this manner. The institutions drew up individual plans.

These plans went to a system-wide committee, composed of the institutional representatives and Board members. This has been a while. I cannot remember exactly what occurred, but I do remember that the plans were examined from the standpoint of a statewide approach or concern and were approved by the Board of Trustees.

That then became the policy of the Board of Trustees for that particular institution. The thrust of the Plan was to increase other race enrollments, other race faculty and staff at the eight universities under the Board.

* * * * *

A. Now, that Plan is given to the President to administer under the supervision of the Board.

[3423] The President is required to prepare annually a report which goes to the Board and that Plan sets out a record of what this institution has done over the preceding year in accomplishing the Plan.

The President has responsibility to monitor it. He is assisted by what our institution calls the Executive Assistant to the President, who is responsible for affirmative action efforts within the institution, but each Vice President, each Dean, each Department Head or Chair has a responsibility and, of course, every staff member in the university.

* * * * *

[3424] Q. Has the University of Southern Mississippi had any difficult in attracting, employing or retaining black faculty members?

A. Yes.

[3425] Q. Could you describe some of those difficulties?

A. Yes. At the time that we were developing our Plan of Compliance, institutions throughout America were developing similar affirmative action plans.

Some three thousand other institutions in American have developed those kinds of plans or at least there is the possibility for that because there are that many institutions of higher learning.

Not only were we doing that in higher education, but businesses and industries were realizing that they must do that.

So, when we recruit faculty, particularly minority faculty, we face some very formidable competition.

Our salaries in Mississippi are not as competitive as they need to be. They are not up to the southeastern average, so other institutions in the south can offer more money than can we.

We have–, I think the record will show that we have brought to our campus some superb black faculty, but as opportunities come to them at other institutions, they really have no choice but to take advantage of them from the standpoint of finances and professional advancement, and in many cases they will have fewer courses to teach so they can attend to their research.

It is just very difficult to keep minority faculty. [3426] We have had a program at the university which has attempted to identify within our student body students who had the potential to become faculty, and we have through a program of nurture and mentoring in many cases paid their way to graduate school, and they have come back to our faculty.

We have done several that way. Three in business. One of whom left us to become Dean of the School of Business at Jackson State. Two of whom are still with us.

They are so outstanding that they're constantly sought by other people. Our advantage is they are from our region, so they would prefer to stay there, and we have increased their salaries so that I am thinking of one, because I dealt with it just recently, who is an associated professor

of accounting. His salary this next year will be as high as his white counter-parts who are at what we in the south say full professor rank; that is, professor rank, and some of them have been in that rank for a long, long time.

* * * * *

[3431] Q. Do you have an Affirmative Action Plan that relates to employment?

A. Yes. Yes, we do.

Q. Who is responsible for carrying that Plan out?

A. The Affirmative Action Officer of the University. And at budget hearings, he reviews the employment practices in every department. We have an occasion when we felt that a particular department was not moving as fast as we though it ought to to employ other race, we would say, you may not fill this position until you fill it with a minority person.

So, we monitor that. There also is maintained inthe Personnel Office the rationale for the decision that is made employing a particular person. The listing of all people who applied and who were considered is given, and there is an explanation as to why the particular person was chosen for that particular position.

Q. Dr. Lucas, what effects, if any, has the implementation of the Board's Plan of Compliance had upon the operations of the University of Southern Mississippi?

A. Well, it has—It has heightened our awareness of the need to be diligent in increasing—Well, making this [3432] institution more inclusive.

The fact is or that is being diligent and vigerous in our recruiting and in our employing to make sure that we bring in additional other race students and other race faculty.

I think that is—I think that is—That is very basic. But it has—It has also affected what we want to believe is our ability to serve the State of Mississippi, and this is—This is

a topic that could get me in trouble with my Board of Trustees, but in protecting some of our historically black institutions and enhancing their abilities to attract other race students, we have been restricted and we have even lost some programs and eventually a center.

Q. What center are you talking about?

A. I am talking about the Natchez Center. In the late 50's, I believe, or early 60's, the University of Southern Mississippi operated at first an Extension Center.

We were there primarily offering courses for teachers. Now, to upgrade their certificates and to renew their certificates.

Well, there was a need for other course work in the Natchez region, and that Center was upgraded to what we call a Resident Center, which simply meant that you could take more courses, earn more than quarter hours, with us, and apply them toward a degree there, than if it was just [3433] an Extension Program.

Enrollments increased. We started a nursing program, and eventually the Board of Trustees allowed us to develop what is called a degree completion program, so that the student could actually earn all of his credits in the Natchez area and have the degree conferred, would not have to come to the home campus for any work.

I believe it was soon after the Compliance Plan was developed, the Board of Trustees mandated that a significant percentage of the faculty of the Natchez Center would be, as best I recall, supplied by Alcorn State University. This was done.

By doing this, it decreased our ability to employ at that center fulltime faculty. Obviously, if we had twenty to twenty-five percent of our faculty part-time from another institution, we could not justify bringing in fulltime faculty.

Well, faculty will do things other than teach. They help to recruit students, to develop programs, to advise students, so we were handicapped in the development of the Natchez Center because of that policy of the Board of Trustees, which was based on its compliance objectives.

A little later – Well, I think in the Compliance Plan for Alcorn, there was perhaps a goal of retention or hope of developing in that institution programs which would help [3434] it to attract other race students.

We had a very fine two year technical program in nursing, which had been very successful. Ninety-five percent of the students who finished that program had passed the registry examination for registered nurses.

The Board of Trustees in giving Alcorn the baccalaureate program, gave it also the two year technical program. So, then, at about the same time, the lower disciplined work was given to the junior college, so we had three factors there which undermined the viability of the Natchez program, and eventually we voluntarily closed it.

Q. Do you have any presence in Natchez now?

A. If we have, it would be non-credit or extension courses, and, of course, that has to be coordinated with Alcorn State University.

Q. With respect to your off-campus programs, what is the current status of the University of Southern Mississippi's presence in Jackson?

A. Well, at about the same time that the statewide Compliance Plan was being developed, the Board of Trustees was developing policies relating to these degree completion centers.

The University of Southern Mississippi was allowed to continue to do courses at the University Center in graduate social work, since we have the only graduate social work [3435] program in the State. That was about it.

There were – there were other needs in the State – In the State Capitol that we wanted to meet, but the Board instituted a policy which required any course which any other institution other than Jackson State wanted to offer in Jackson to be approved by the Board office.

You could not just go into Jackson and offer a course. The approval of that course by the Board office and the Board itself depended upon the approval of Jackson State.

If Jackson State offered that course in its catalog, we were prohibited from even almost thinking about going in there. If the course were not listed in their catalog and we wanted to offer it, Jackson State still had veto over our offering that course, whether it wanted to offer it or not.

So, as a result of that policy, those policies, our presence in Jackson is just almost not at all now.

Q. Are those policies in effect today?

A. Yes.

Q. Are there any other limitations on where or when you can offer an off-campus program?

A. We are prohibited by Board policy from offering a course within a fifty mile radius of another institution unless we have the approval of that institution.

Q. Are you offering a course in Jackson in library [3436] science now?

A. Yes.

Q. Who is teaching that?

A. Yes, we have. Our Dean of Library Science took his doctorate at the University of Michigan, which is one of our best graduate schools in library science.

There is a faculty member at Jackson State who was his colleague there. They both have doctorates from that program, and she has been teaching some library science work for us. She then is an adjunct member of our faculty for that purpose, although she is not listed on this list. So we

have offered one or two courses in library science on that basis.

Q. All right. Are there any limitations placed by the Board upon the academic programs that the University of Southern Mississippi can develop or offer on your own campus?

A. Yes.

Q. What are those limitations?

A. It is very difficult to get a new program approved by the Board of Trustees. Part of it has to do with the process that is involved in it and part of it has to do with Board policy in terms of assignment of leadership roles.

Some years ago, the Board of Trustees assigned leadership roles to the various institutions to—the three [3437] comprehensive universities.

Now, it is virtually impossible for us to get a new program approved if one of the other comprehensive universities has leadership in that area, unless that other institution would [illegible] and support our doing it.

I remember I [illegible] we were asking for a master of science in public [illegible]nistration, and it seems to me that we wanted to offer it to some State officials. It was a specific program, as best I recall, and the Board of Trustees would not allow us to do that because at that point Jackson State and Mississippi State had a joint program.

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[3438] **TESTIMONY OF DR. AUBREY K. LUCAS**

Q. All right. Now, you mentioned the five percent allocation for people with below the 15.

[3439] Briefly, how does your university choose students for that group?

A. We look at those students whose scores are not 15, who are recommended to us by a department or division in

the university which wants that student and feels that that student can make a contribution to the university generally in the fine arts: music, dance, theater, or in the area of athletics, but I want to hasten to say that in this past year, I think only ten percent of those below 15 were athletes.

We, in the spring of the year, when most of our applications are already in, we begin to review the records of those who are less than 15 and who have been denied. They get an automatic denial.

Then we look at their records and based on their performance in high school and we particularly look at English, becuase grades in English are very good predictors of success. The English ACT score and the English grades in high school are good predictors, so we look at these. We look at the total high school experience. We like to have recommendations from people who know them well, who have taught them, and based on that, we will start with 14's and we admit those 14's first. Not all 14's are admitted, because some of the 14's will not have a high school record that we think will warrant their being [3440] admitted.

Then we go to 13's and then to the 12's, and we won't go much below that until later on in the summer. But in every case, we are looking at what that student did in high school, what the chances are for success with us.

Q. Now, have any of the methods that you have talked about for admission been useful to you in increasing black enrollment at Southern?

A. Yes.

Q. Could you explain that briefly?

A. In looking at our—Well, first of all, we have not admitted our full quota of students with ACTs below 15. We have found that these are exceedingly high risk students.

We, as a comprehensive university, don't have the resources to undergird the efforts of a lot of high risk students. We just don't have the money.

There are opportunities in our State for high risk students. You mentioned – you asked me about other race enrollment increases.

When we review what we have done with admitting students below 15, we find that the majority of the students below 15 over these years, the majority of those students have been minority.

* * * * *

[3441] Q. All right. Dr. Lucas, has the State met your university's needs with respect to providing funds for facilities in recent years?

A. No.

Q. Would you explain that briefly, please.

A. We have unbelievable and critical and pressing space needs which the State has not addressed.

Some years ago, I forget now how long, the Board of Trustees employed an impartial consultant, Dover & Associates, to come into the State and look at all of the institutions and give an analysis under the Board's administration, and to make some judgment about the construction needs at those institutions.

The University of Southern Mississippi and Jackson State University had the most critical needs. We are space stopped.

Particularly, we need an addition to the Cook Library, which is our primary library holding the university's main collection.

We desperately need classroom space and faculty offices. We need space for research on our faculty. We [3442] are slowly but surely bringing in a faculty which can do important and significant research, and we don't have the space for them. We need a continuing education center. We have many, many needs.

Q. Dr. Lucas, as President of the University of Southern Mississippi, are you aware or do you become aware of particular accomplishments or recognitions of your individual faculty or employees?

A. Yes.

Q. Could you describe to the Court just a few, if there are any, accomplishments or special recognition of your black faculty employees?

A. Yes. We just recently learned that Professor Skip Norman in Radio, Television and Film, who is an expert in the history of film has been awarded a very prestigious Fullbright award to study abroad this next year.

Professor Smith in dietetics is Chairman of the Scholarship and Awards Committee of the American Dietetics Association, and as Chair of that Committee, he is responsible for awarding each year over a quarter of a million dollars in scholarships and awards.

Dean Shirley Jones, who came to us as Dean of our School of Social Work from State University of New York, Stoney Brook, has a national reputation as a superb social work administrator. She has received national awards [3443] and is now serving as a member of the Council on Accreditation of Social Work Education, which accredits social work programs in the United States.

Q. Can I interrupt.

Did you say Dean Shirley Jones?

A. That's right.

Q. Is she an academic dean?

A. Yes, Dean of our School of Social Work. She is a tenured professor.

Q. All right.

A. Professor Larry LeFlore in criminal justice. He has just recently completed his dissertation under our faculty development program, whereby we use our – some of our

compliance monies to help him with his graduate work, and he is establishing a national reputation in the area of Juvenile Justice and History of Criminal Systems.

His publishing is immensely significant. He is one of those that though he is an assistant professor, his salary for this next year will be better than many associate professors in the university.

Professor Hompton Williams, who is a Professor of Education Administration, edits the "Journal of Educational Psychology." This is a nationally juried journal where professionals from throughout America read the articles which are submitted and determine whether or not they ought [3444] to be included in that publication.

Now, that publication is listed in the major biographic compendiums in academe.

Q. I don't want to interrupt you, but you don't have to name all of them.

Are you also aware of involvement, accomplishment or recognition of individual black students at your school?

A. Yes.

Would you briefly describe a few of those examples?

A. Yes. By popular vote of our student body a few years ago, a Ms. Reb from Jackson as Homecoming Queen. We have had black students in the Homecoming Court, and this is by election.

Our outstanding athlete Reggie Collier was selected as Mr. U.S.M. That is by vote. We have had two runners-up in Mr. U.S.M. were black, and one who almost achieved it, one of them almost edged out my son for that award.

We have black students who are included in Who's Who in American Colleges and Universities, who are included in the Hall of Fame. We have distinguished military students who are black. We have had a black to be the Vice President of our Inter-Fraternity Council.

We have an important group on our campus which serves as official host and hostesses for the university. Those are called Southern Style. It is a very inclusive group [3445] that they are rigorously selected. They give tours about the campus to prospective students, they help us host events, such as legislative weekend, but more critically they assist with our orientation of students in the summer months.

We think it is important that when other race students come to our campus that they see other race students involved in these important activities.

Another important group on our campus is our resident assistant groups, and those are key undergraduates in our resident halls who are responsible for the supervision of the resident halls under the direction of a Resident Manager. Thirty percent of our resident assistants are minority students.

* * * * *

You mentioned junior college, but I don't think you mentioned whether you get a substantial number of students or not from junior colleges.

Do you get a lot of transfers.

A. We do. In fact, in any given year, we will have as [3446] many transfer students come to the university as new students as we will have freshmen.

* * * * *

[3449] Q. Do you know whether or not the institution has recruited at the graduate schools of Atlanta University or Howard University to identify prospective black faculty?

A. I am sure we have.

Q. Has the institution contacted the Southern Regional Educational Board Data Bank as a source for identifying and recruiting minority faculty?

A. I think we have done that.

* * * * *

[3458] Q. Dr. Lucas, in terms of the exception for five percent that applies to students with ACT scores below 15?

A. Yes.

Q. You testified that the majority of the students who had been admitted pursuant to that provision of your university have been black?

A. Yes.

Q. So do you regard that as an important factor in terms of black enrollment in your university?

A. It is a factor.

Q. Okay.

A. But it is not—You see, if you are talking about over half of a number, I think eighty is what we were allowed. Some years we only admitted fifty, some years fewer than that.

If you were to say all of those students were minority, you are not talking about a large percentage of, say, the fifteen hundred minority enrollment at the University of Southern Mississippi.

It was a factor, a helpful factor, but not an overriding one in terms of the other race enrollment.

Q. Do you consider it important to inform prospective applicants that that exception exists?

A. That is a difficult question. I am not sure we ought to even be doing that. When we review the records [3459] our students admitted on that basis, and we have just done some of that, we find that as an institution, we are not very effective in helping them to be successful and we have all kinds of institutional aids which we bring into play.

Of the students who were admitted with 9 ACTs this past year, I think there were four, and that is about the

most we have had that low in quite some time, not one of them achieved a C average.

When we look at the 11's, 12's, 13's, 14's and even the 15's, more of those students will end the freshman year with less than a C average than those who will have C averages.

Only when we reach a test score of 16 that we find a majority of the students will have a C average, which really is the basic level for success.

So, I have reluctance to advertise, though I think we do—I am not positive about whether that is in our bulletin, our general catalog, but, of course, we have a lot of correspondence with people.

I don't know that we put that in our brochure, but it is generally known, I think, throughout the State. This information is reported to the Board, it is discussed in open session, and it is reported fairly widely in the newspapers in this State that this is a practice.

[3460] Q. Is it your institution's policy not to put it in the brochures that are distributed to the students?

A. I am not sure it is an institutional policy, and I cannot tell you sitting here whether we are doing it or not.

Q. Did you—The documents that you—on which you record have students at each ACT level in terms of grade point average at the IHL-18, is that correct?

A. Well, I don't recall now what IHL-18 is.

Q. You don't know what it is?

A. Well, I think if I saw it, I would know what you are talking about, but—

Q. Did you bring with you the documents today that have that information?

A. No.

Q. I will hand you four documents from your institution that were all labeled in a folder named Board 161.

* * * * *

Q. If you will first look at the one that in fact says Board 161?

A. All right.

Q. It should be on the sixth page of what you have.

A. All right. Is that labeled at the top Apply Carefully?

Q. Yes.

[3461] A. That you have clipped?

Q. Yes. In the left-hand column about half way down, where there is a Number 2, make a composite score of 15 or higher on your ACT?

A. That is correct.

Q. And in the right column?

A. Yes.

Q. The third paragraph from the bottom of the page?

A. Yes.

Q. Does it say a minimum ACT assessment composite score of 15 is required for admission?

A. Yes.

Q. And it is true, isn't it, that one does not find anything as to the exception?

A. I would have to read the entire page.

Q. Well, go ahead please.

A. (Witness responds.)

Q. All right.

A. I don't see it here.

Q. Okay. Is that a brochure that your university has used in terms of recruiting students?

A. I would say, yes.

Q. Okay. Now, there is a second brochure. It doesn't have a number. At the bottom of the page it says, University of Southern Mississippi.

[3462] Do you have this one?

A. Yes.

Q. Okay. Now, the sixth page from the end, sixth page from the end of the document.

A. The one that is clipped?

Q. Labeled Admissions.

A. Yes.

Q. Okay. In the left column, regular freshman admission, isn't there a sentence that says, "A composite ACT score of 15 is required for admission"?

A. I see that, yes.

Q. And in the right column?

A. Yes.

Q. The second paragraph, doesn't it say, "A minimum ACT composite assessment score of 15 is required for admission"?

A. It does.

Q. And again, isn't it the case on this page that there is no mention of the exception?

A. A quick examination indicates that it is laid out very much as the other one, and I see no mention of that.

Q. Okay. I will ask, again, is it the policy of U.S.M. not to mention the exception?

A. It is not mentioned. I don't know that we say that it is the policy not to mention it.

Now, because I have spoken to applicants and their [3463] parents and to school personnel and have informed them about that possibility.

I think you would find that it is generally understood that there is such a policy.

Q. You said your university makes a real effort to recruit students, isn't that right?

A. Yes.

Q. And these booklets are a part of that real effort?

A. Yes, and–

Q. You have these booklets because the catelog is four hundred and two pages, and it is good to have booklets like this just on recruitment?

A. Right, and we think this gives more than the catalog.

Q. Was your answer to my question yes?

A. Give me your question again.

Q. My question was, do you have booklets like this because the catalog is four hundred and two pages, and you think it is good to have booklets like this that focus on recruiting students?

A. Yes, it is good to have booklets such as this for recruiting students. We don't have them simply because the catalog is so thick. That is one factor.

Q. Now, I give you another document.

* * * * *

[3465] Q. Does this contain the cover or copy of the cover and two pages from the catalog?

A. 1986/87. Yes.

Q. Now, if you look at the second page of this, toward the bottom, is there a sentence that says, "A minimum ACT composite score of 15 is required for admission"?

A. This is correct.

Q. All right. Now, if you – There is on this page three paragraphs following that?

A. Yes.

Q. Which don't refer to the exception?

A. Okay.

Q. My question was, on that page, are there three paragraphs that don't refer to the exception?

A. That is correct.

Q. Okay. Now, on the top of the next page, there is a paragraph. Is it not correct that the exception is referred to in the third sentence?

A. Yes.

Q. Okay.

A. It is in the catalog.

Q. Now, is the exception referred to there pretty much my quoting verbatim the design of the exception as it appears in the Board of Trustees' Admission Standards?

A. I couldn't answer that without looking at the Board [3466] of Trustees Admissions Standards.

Q. Well, there is a reference here to – it says in part in identifying the number of exceptions, it refers to, quotes five percent of the previous year's freshman class enrollees or fifty students for summer, fall and spring terms to accommodate talented and/or high risk students.

Do you recall that as being a part of the way that the Board phrases it?

A. It appears to me to have similar wording. I would not want to swear it is identical with Board policy, but from my recollection it is certainly in harmony with Board policy.

Q. The fifty students –

A. Makes it sound as though it is a Board policy.

Q. The fifty student provision has never had any relevance to your university –

A. That is correct –

Q. Excuse me. The reporter can only get one of us at a time.

A. I am sorry.

Q. The reference to the fifty students has never had any relevance to your university during the time of your tenure there, has it?

A. That is correct.

Q. Doesn't that convey to people who read this provision, doesn't it suggest that you have fewer provisions in the [3467] exception for your university than you, in fact, have by including the fifty?

A. It may, but I can assure you that that's not intended.

Q. Going back to the previous page, where the sentence appears, "A minimum ACT composite score of 15 is required for admission."

Has that been a literally correct description of your admission practice in any year that you have been at the university?

A. A literal?

Q. Yes.

A. By that you mean, without exception?

Q. Has it been correct in any year that you have been at U.S.M. that only students who had a 15 or higher were admitted?

A. No, that is – No, that has not been the case.

Q. Don't you think that there is a danger that someone reading the catalog who had below a 15 having read that sentence without any qualification would stop without reading further to the three paragraphs or two sentences to find the exception?

A. Let me make it clear that we do not encourage students with less than a 15 to come to the University of Southern Mississippi. That is why we have, to my knowledge, never fully used our five percent.

[3468] Q. Do you think that that would be clearer if it read, in general, a minimum ACT composite score of 15 is required for admission. However, U.S.M. might also admit approximately a hundred students whose ACT test scores are from 9 to 14 to accommodate talented and/or high risk students?

Do you think that that would be a clearer way of expressing that thought?

A. Well, I would argue with the one hundred. I don't think we have ever had that many. We have never admitted that many.

I would probably not want that statement because I think it would encourage those with less than a 15 to think

that their admissibility was a good probability.

* * * * *

[3469] Q. Would you agree that the average ACT scores for your black enrollees have been lower than your average ACT scores for your white enrollees?

A. Yes.

Q. You said that nevertheless retention has been better in terms of black enrollees?

A. Yes.

Q. Doesn't that –

A. Yes.

Q. Doesn't that indicate that ACT scores tell you something different in terms of ability to continue in your school for white and black students?

A. Well, you see, my testimony also is that when you get below a certain point on the ACT, the likelihood of success is considerably decreased.

Q. Okay.

A. Regardless of race.

Q. Did you remember my question?

Do you think you have answered my question?

A. If not, give it to me again, and I will try.

THE COURT: Would you like the question read back?

[3470] MR. PRESSMAN: Yes, sir.

(Whereupon, the last question was read.)

THE WITNESS: I am not sure that it does. I think there are other factors that work – that are at work that I would like to discuss.

First of all, I was talking with a high school librarian just this week-end about the fact that our black students have a better survival percentage than our whites, and I asked her why?

She said she thinks that our black students are not taking for granted that they are going to participate in the

good life, that they will have economic sufficiency without a college education.

They bring a higher level of motivation. Generally, our white freshmen assume that this is going to be their life.

Another factor involved here is that a larger percentage of our black students live in resident halls, a larger percentage of our freshmen than do our white freshmen.

The research clearly indicates that students who live in resident halls have higher grade point averages than those who do not. There is a rich, secure, safe nurturing environment in the resident halls which we think contributes to this factor that black students have a better retention rate and better graduation rate.

[3471] We also have a larger percentage of our black students who are involved in work on campus; that is, black freshmen than our white freshmen. The research also indicates that when a student can identify with a group, whether it is a Greek organization, a professional organization, a religious group or even be involved in the work space—work place with other people, his or her survival rate is considerably enhanced.

So, there are many factors at work here which we think can account for the survival of our black students and their continuing to graduation.

Q. Didn't you just tell in substance that there is a lot—There are a lot of factors in addition—In addition to one single composite score on the ACT that are related to whether people can succeed, black persons can succeed at your university?

A. And whites, too.

* * * * *

[3472] Q. Let me give you a copy of United States Exhibit 1, which is the Plan of Compliance.

If you will look at the third page which has Roman II at the bottom.

(Document passed.)

MR. PRESSMAN:

Q. Does this indicate as of this time May 28th, 1974, Alcorn State University had twenty-eight baccalaureate degree programs?

A. That is what is given here.

[3473] Q. All right. On the next page, you—does it indicate at the University of Southern Mississippi, a hundred and six baccalaureate degree programs, seventy-three masters programs, thirty-seven doctorial programs, and twenty-seven specialists programs?

A. This given here, yes.

Q. Doesn't this reflect that as of this time, that in Southern Mississippi there was a racial distribution of the programs among universities?

A. I could not say that.

Q. Why?

A. Because I could not say that this was here because of racial makeup. I cannot say that.

Q. You think that this could have come about through factors other than race, this kind of distribution of programs?

A. It could have.

Q. And in your opinion, did it?

A. I think it came about because of demand and because of location.

If you will look at Delta State—I guess this is what, 1974. The baccalaureate programs of Alcorn and Delta State are similar.

Q. Do you notice Delta State has some other programs?

A. Yes.

[3474] Q. Thirteen master's programs and four specialist's programs?

A. That is correct.

Q. Well, you just referred to location?

A. Well, you see, you have to understand that Delta State and Alcorn have similar situations in that they are both located on the western edge of the State.

The river serves as a barrier. They have no State beyond them to the west. Population from those other states cannot readily get to them. There is no bridge at Alcorn or no bridge at Cleveland.

The point I am making is that these two institutions have not been able to develop in terms of size because of location.

Q. Although you just agreed that this reflects Delta State had seventeen programs above baccalaureate, right?

A. Yes.

Q. You refer to location as a factor?

A. Yes.

Q. All right.

A. I don't say that location had—Determined that Delta State had graduate work and Alcorn did not.

Q. Okay. If you would look at these pages here, let's see. It shows thirty-eight doctorial programs at Mississippi State University on Page 2?

[3475] A. Yes.

Q. And twenty-eight doctorial programs at the University of Mississippi on the top of Page 3?

A. Yes.

Q. And thirty-seven doctorial programs at the University of Southern Mississippi on Page 3?

A. Yes.

Q. And on Page 2, Jackson State University, it shows no doctorial programs?

A. Yes.

Q. And Jackson State is located at the Capitol?

A. Yes.

Q. Do you see a location explanation for that?

A. No, I don't.

Q. Do you see an explanation other than a racial pattern of distributing doctorial programs?

A. No, I would not say it is a racial pattern. I would say—it may well, very well have something to do with what the institution wanted to be and wanted to do.

What its leadership wanted it to be and what it wanted to do, and what its coinstituency, its faculty.

Q. And this document is dated May 28th, 1974?

A. Yes.

Q. And your view is that the reason—Your view is that [3476] the reason Jackson State prior to that time did not have any doctorial programs related to what its leadership wanted to do?

A. I am saying that would be a factor.

Q. And your testimony would be that race played no role?

A. I cannot say that.

Q. All right.

A. Do you think it played part of the role?

A. I am not going to speculate as to what role it played.

Q. Did you think that your testimony about what the leadership at Jackson State wanted was speculation?

A. In all honesty, I may have to admit that some of it was.

* * * * *

Q. If you would look at Page 13 of the Plan of Compliance, U.S. Exhibit 1.

A. All right.

Q. Now, at the bottom of Page 13, numbered paragraph 3 and at the top of Page 14, I want to read that paragraph.

"Special efforts, along with scholarship awards are to [3477] be made in recruiting qualified graduate students of the other race to be trained and employed as future teachers at institutions of higher learning in Mississippi. During the academic year of 1974/75, the three universities with doctorial programs may award, if possible, twenty graduate assistant fellowships to qualified students of the other race. These fellowships are to be used to train future terminal degree teachers, each of the three universities which offer programs only through the master's and educational specialist's degrees may award possible ten work study fellowships to graduate students of the other race. These awards are to be made to students who are committed to continuing educational programs and teacher preparation until they are interminable or educational specialist's degrees.

Each year a total of ninety new minority students are anticipated in this program. By 1980, the seven year accumulation will provide a potential of six hundred and thirty additional minority faculty.

During the seven year term of the Plan, a substantial amount of dollars will be invested in additional minority faculty prospects. The Board will make a special request to the 1975 Mississippi legislative session for three hundred and forty-five dollars (sic) to underwrite this program during the 1974/75 school year.

[3478] Mr. Chambliss advises me that I read three hundred and forty-five dollars instead of three hundred and forty-five thousand?

A. Yes.

Q. Okay. Has there been compliance with the substance of what I read?

A. First of all, I don't believe the appropriation specifically for that purpose was a reality.

I think – I believe there was a good faith effort to accomplish this section without the appropriation, but I rather doubt that any of the institutions achieved that goal.

Q. This was a Plan to develop from programs, black undergraduate students, persons who could be faculty persons at universities in Mississippi, is that right?

A. Well, that is correct. And we were very successful with some of these.

Q. But you have referred to three persons?

A. We have had more than that. I was speaking specifically of business, because there is such a critical shortage of faculty in general without regard to race in business.

We were able to assist three to get through the doctorate, not at our institution. We really don't want students earning the doctorate at our institution and teaching there, because that is academic inbreeding, and [3479] we don't like that, so we were able to assist them to go away, and we have done that with other minority students.

But that didn't –

Q. But that didn't approach this goal, did it?

A. Of twenty –

Q. Yes.

A. Well, I cannot recall how many graduate fellowships were awarded to other race students in that year. I don't have those data, but I would rather doubt that it was twenty. That goal was presupposed on a special appropriation.

Now, which did not materialize.

Q. Okay. Now, you talked about limits that the Board of Trustees placed on new programs at institutions.

A. Yes.
Q. And you testified about that, right?
A. Yes.
Q. And you testitified that it was very difficult to get a new program approved?
A. That's correct.
Q. Was this increasingly a problem as the 1970's unfolded and into the 1980's?

[3485] * * * * *

Q. Do you consider that having black staff is important to the ability to recruit black students to your campus?
A. Yes.

* * * * *

[3490] **TESTIMONY OF DR. FOREST KENT WYATT**

* * * * *

Q. Dr. Wyatt, would you describe your educational and employment history to the court, please.
A. I graduated from Cleveland High School in Cleveland, Mississippi, and I graduated from Delta State Teachers [3491] College in 1956. I graduated from the University of Southern Mississippi, with a Masters Degree in my major area of mathematics in 1960. I'm sorry. Yes, 1960. And then I received my doctorate in administration and supervision from the University of Mississippi in 1970. And I have done advanced study at Harvard for one summer since then.
My employment, after graduating from college I taught mathematics and coached in Mobile for four years and then I returned to Cleveland where I coached and taught as principal in the Cleveland Public School System.

In 1964, I was employed by Delta State as alumni secretary. In 1969, I was named assistant to the president and I remained in that position until 1975, assistant to Dr. Ewing and Dr. Lucas, two different presidents. In 1975, I became President of the Delta State University.
Q. And are you currently the President of Delta State University?
A. I am currently the President of Delta State University.

* * * * *

[3493] Q. Dr. Wyatt, what are the Delta State's policies and objectives and practices with respect to recruitment of black students?
A. Well, Delta State wants to recruit all students who meet our admission requirements and we are especially diligent in recruiting minority and black students. We have a black admissions officer who relates very well with blacks and does a good job in that area. We also have – all of our publications that we use in recruiting depict blacks in that publication.
In addition, we call on all the predominantly black schools and predominantly white schools and junior colleges in our areas, so those are some of the ways that we recruit minority students as well as majority students.
Q. How long have you had these policies and procedures at Delta State?

* * * * *

[3494] A. Well, since I've been President, and, in general, the affirmation that we're going to recruit all students that meet our admission requirements at Delta State.

Q. Have you had any correspondence or communications from the Board of Trustees of State Institutions of Higher Learning with respect to recruitment of black students?

A. Yes, we have. We have been instructed by them that we should recruit black students that meet our admission standards, and we have passed that down through our regular chain of command at Delta State and all other departmental people, and certainly our admissions officers and administrators know that this is what we want to.

Q. All right. Are there any instruments or documents that you consider to be a manifestation of the Board policy?

A. Well, the Compliance Plan of 1974 would be the plan that came to us that we helped at the local institution development. It came back to us from the Board informing us that this is the Board policy and that we were to follow it, which we do, and—well, would you like for me to [3495] explain that?

Q. That explanation is sufficient for now, thank you. Could you tell me how many black students you've had at Delta State in recent years?

A. Usually, we recruit—I would say we have somewhere in the neighborhood of six hundred to seven hundred black students on our campus, for the last several years somewhere in that range, and since 1978 or so.

Q. Okay. And what kind of percentage does that come to?

A. Okay. In the spring and fall semesters, the normal term of the university, our range during this period of time would be around twenty percent, and up to in the summertime and up to approximately up to about thirty-five per-

cent black students on campus. Our summer school enrollment is—has more blacks because of the teachers in our area who come back to get recertified and take courses at the graduate level.

But, in general, I would say that our regular student enrollment is in the low twenties, and in the summertime our regular—our enrollment would be in the low thirties.

* * * * *

[3497] Q. Are there any specific policies or techniques taken by Delta State with respect to recruitment and hiring of black faculty members?

A. Well, we are aware and all our department heads are [3498] aware that it is our intent to have more black presence in our academic areas, and if the credentials, if the evaluation of the individuals that we receive, if they are within the same range, then certainly we're going to select the black faculty.

In addition, we, at times, will contact black institutions that we know of that have graduates in that particular field to see if they have applicants or candidates for the position.

* * * * *

Q. Do you have any particular affirmative action policy or people who are charged with duties toward affirmative action and hiring?

A. Yes, we have an affirmative action plan. The Director of Personnel is our Affirmative Action Officer and [3499] she reviews all these advertisements that go out to make sure they meet our plan. She's the one that determines where these will be advertised.

* * * * *

Q. Yes. Are you aware of any communications or policies by the Board of Trustees of the State Institutions of Higher Learning to your institution regarding increasing black faculty or other employment?

A. That was part of the Compliance Plan was that we were to meet the goal we had established for black presence on our campus. And we certainly recognize that that is what our Board has instructed us to do and we at Delta State have passed that information to each of our department heads and deans and those who are in employment positions at the institution. That's what we expect of them, and I think they do it to the best of their ability.

* * * * *

[3504] Q. Okay. Do you get very many transfers to Delta State?

A. We do. The former President I mentioned, Dr. Ewing, came to Delta State as President from Co-Lin Junior College. He had been President there for over twenty years. And he attracted and recruited a lot of good junior college transfers to Delta State. So since nineteen—late 1950's we have been recruiting junior college students very heavily.

In fact, our junior college is also significantly larger than our freshman class because of the influx of junior college graduates. And we recruit the junior [3505] colleges very heavily.

In fact, Coahoma County Junior College which is a predominantly black junior college provides us with our third largest number of transfer students from junior colleges.

Q. Another thing you mentioned was I think you called it a high risk group, allocation for students with below 15 on the ACT. How does Delta State choose the students that can attend the institution in that high risk category?

A. When we receive from the American College Test a printout that shows you, say, that a student makes below 15, 12, 13 or 14, we will write that student and tell them that we have a limit of so many students that may be admitted and that we request that they get to us their transcript from the high school. They have—we usually ask them to have the principal or counselor write a letter to us, and if we find that student is in that group we're seriously considering to be admitted with a 14, 13 or 12 ACT score, we will usually call and get some other input from members of that student's high school about their study skills and that type of thing.

* * * * *

[3506] Q. And how many of your available slots do you fill?

A. We fill right at fifty every year. We never go over the amount established for us, but as close to fifty. Sometimes we'll have a student that will drop out or not show right at the last few minutes and so we might have forty-nine or something like that, but usually we fill fifty.

Q. Have you found any of these alternative access means to be of use in enrolling black students to Delta State?

A. Well, yes. Of that number of fifty, this year I believe sixty percent were black students.

* * * * *

[3509] Q. Earlier on, you mentioned the core curriculum requirements for high school students. Have you noticed or has your institution seen any effect of the core curriculum on students enrolling at your University?

A. The core curriculum started about four years ago, and we saw the biggest increase in ACT scores from our high school graduates this past year that we had ever seen. And I would have to give our Board of Trustees primary credit for that increase because of the requirements that they are placing on students to go to college; therefore, the public schools started requiring their students to take those courses, and it brought up their scores on the American College Test. So, yes, I think it's been a – certainly been a positive effect on it.

Q. Now, as President of Delta State, are you aware of the extent of involvement or accomplishment of black students at your University?

A. Yes, I am.

Q. Would you please briefly describe that extent to the court.

A. We have had black students involved in just all facets of the institutions, and certainly on the athletic teams. And some of our sports have more blacks than we do whites on the team. In the band we've had blacks, majorettes have been black, our drum major has been a black. [3510] In our performing group that goes around and entertains at different schools and civic clubs, we've had a black. It's called the Rennaissance Performing Group. We have blacks in all facets of our student government association, from the student senate to the student court. We have blacks who worked on the newspaper and on the annual. We have black students that have been

cheerleaders. We have black students who have been on our modeling squad, both male and female blacks on the modelling squad. We have blacks on our academic committee. We have black students that serve as resident assistant in the dormitories.

In fact, if you visited our campus today, you would know that we were a fully integrated institution because we have blacks fully involved in all aspects of the institution.

* * * * *

[3539] Q. Now, you did have a program at one point where students could enter Delta State during the summer and would – and then – well, students with less than 15 on the ACT, they could enter in the summer, and you would evaluate their performance?

A. Right.

Q. And if they did well, they would be admitted?

[3540] A. Right.

Q. You no longer have this program?

A. No longer have that program.

Q. Why did you discontinue that program?

A. Because the Board established admission policies for all the eight institutions, and that was not part of it.

Q. Okay. You don't use this particular program for students who score less than 12 on the ACT – now – strike that.

Now, I think you stated at one point you could admit five percent of your – five percent of the entering class could be admitted even though they might score less than 15 on the ACT?

A. Well, that's five percent or fifty, whichever number is the greater, and fifty is always greater for us.

Q. And has there ever been a time when you could admit more than fifty students with less than 12 on the ACT?

A. Less than 15 or less than 12?

Q. Less than 15.

A. Not since the Board guidelines went into effect. Before the Board guidelines we could take as many as we wanted to who coiuld work their way in through the summer schedule session.

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TESTIMONY OF DR. THOMAS MEREDITH

[3546] MR. STEPHENSON: Your Honor, we call Dr. Thomas Meredith.

* * * * *

DR. THOMAS MEREDITH

* * * * *

[3547] Q. And your place of employment?

A. University of Mississippi.

Q. And what is your job title with the University, please, Dr. Meredith?

A. Vice Chancellor for Executive Affairs.

Q. Would you relate briefly, please, sir, your formal education experience since high school.

A. Yes. I received a BS degree from Kentucky Wesleyan College in Owensboro, Kentucky, a Masters Degree from Western Kentucky University in Bowling Green, an EED Doctorate in Education from the University of Mississippi.

Q. When did you obtain your doctorate, please, sir?

A. In 1971.

Q. Woud you provide the court also with a brief overview of your employment history following the securement of your BA and MA degrees.

A. I taught public schools in Kentucky for six years. During that time I obtained a Masters Degree, then came to the University of Mississippi for two years to work on a

doctorate, taught while I was there and worked in the Bureau of Institutional Research. Left there to go to Illinois for [3548] two years as a principal and went to Indiana for a year as a principal, and then came to the Board of Trustees as Academic Programs Officer in 1974.

And during this period of time, I was teaching as adjunct professor for the University of Indiana while in Indiana, and then ten years while at the Board of Trustees from 1974 to 1984, I taught for Jackson State and Mississippi State and also adjunct professor for the University of Mississippi.

Q. Were you a principal of a high school?

A. Yes, sir.

Q. Would you relate, please sir, your responsibilities as an academic programs officer with the Board of Trustees?

A. It covered a wide variety of area. I was the first academic officer they had had, and that had some background in higher education research and so forth, and that job encompassed developing academic programs, inventory, in other words all items dealing with the academic areas, including the accreditation, development of new programs, evaluation of programs. Just a whole variety of items dealing with the academic area.

Q. Did your responsibilities also include monitoring and supervision of institutional admissions standards?

A. Yes, sir, it did cross over into admissions standards.

Q. Did you mention that you also served as associate [3549] director for programs and planning?

A. No, I did not. I'm sorry. After serving as the Academic Programs officer, around 1980 or 1981, I became the Associate Director for Programs and Planning.

* * * * *

[3550] Q. Dr. Meredith, Let's return to 1974, if we could, please, sir, when you joined the Board of Trustees staff. What were the admissions standards for the Institutions of Higher Learning at that time?

A. The three comprehensive universities, as I recall, had a gentleman's agreement of 15 composite score on ACT. I'm really a little unclear as to Delta State and MUW's status relating to that. Delta State followed that standard to some extent, and I believe MUW did, as well. But the agreement, as I remember, was twenty-three comprehensive universities.

The three historically black institutions had no minimum standard at that time except that imposed by the Board which was fifteen and a half units, and then you had to also have taken the ACT but there were no scores required.

Q. Did there come a time when the Board considered modification of these standards?

A. Yes, sir, shortly after my arrival, the Board of Trustees began to look at that question, and that would have been 1975-76.

Q. Could you tell the court, please, sir, how the issue arose?

A. Well, there was a number of items, I think, at that [3551] time that caused that issue to come up. There was a concern across the country as well as in Mississippi over the lack of quality of graduating seniors from colleges. I think a review of the literature at that time will discover quite a large ~~national~~ concern over that; that students couldn't write as well, they couldn't read as well, their computation skills weren't as great. So there was pretty strong national concern at that time over that.

There was employer's concerns as various industry and businesses across the country began to complain about what they were getting. There was concern from our Board of Trustees having been though the enrollment boom of the sixties and early seventies, with a question of such a great influx of students and such a rapid time period, was the quality still there? Because we just had this major impact of new students.

University personnel were complaining about the poor quality students they were getting, the under-prepared students that were coming to college. And I became aware of that.

Part of my job at the Board of Trustees was to audit enrollment reports of student credit hour reports which is the basis for the funding. And I was on every campus every semester, and the complaints were constant about the poorly prepared students that were coming to college. [3552] We also saw a couple of other things happening at that time that the Board of Trustees became aware of. One, particularly at our black institutions, there was a tremendous loss in enrollment between the freshman and sophomore year. An awful lot of significant enrollment at the freshman year and, yet, you look at the sophomore year and half would be gone. So it gave some indication that the quality of student coming in was not capable of doing college level work.

And I guess the other item that was kind of yelling at us at that time, and it went on for some time after that was, particularly again, at our historically black institutions that there were a number of students graduating in teacher education and they had to take the NTE and less than half were passing the NTE.

Now, that's significant in terms of the fact that the NTE required score at that time for this State was eight fifty, and eight fifty was something like, that I recall, the twelfth percentile, which meant that eighty-eight percent of the students in America scored better than that score on the NTE, and yet half of our students from the black colleges were failing that test.

And, of course, the Valley was struggling at that time with its nursing program and something like a twenty percent passing rate on the nursing licensure exam.

[3553] So all of those things were rolling and happening, and it caused the Board of Trustees to say, wait a minute, what's going on? Are we getting the quality student that we need to have at an institution of higher learning? These are universities. Are we doing the right thing?

Q. Did the Board staff take steps to address these issues and concerns, Dr. Meredith?

A. Yes. We, as has been documented, the State of Mississippi—or the Board of Trustees required that all students entering the eight universities must take the ACT, as we knew we had a standardized arena to get some comparisons. We began to read again the ACT literature, study all they had to say about entrance exams and so forth and where the ACT fit in there. We began to have a number of conversations with the folks from ACT at that time. We looked at the norms involved. We began to survey the institutions to get some picture of the kinds of students we were having to—that were being allowed into the institutions. Up until that time since there were no standardized scores required to get in, we weren't gathering information from the institutions on the scores of entering students, so we surveyed them to find that out.

Q. What did your survey reveal, please, sir?

A. We surveyed and asked for information for the fall of 1973, 1974 and 1975, and we were distressed by what we found. [3554] With the large numbers of students who were admitted to all of the institutions, all eight, with terribly low scores, scores as low as ones and twos, as a matter of fact, out of a possible high of thirty-five on the composite. That was very distressing.

The numbers were—for example, I remember Jackson State in one year had twenty-eight students with five or below, and this caused us great consternation, as you can imagine.

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[3556] Q. I believe you mentioned, Dr. Meredith, that the Board staff also consulted with the ACT with respect to—

A. Yes, sir.

Q. —the review conducted. Would you relate some of the things you learned or the nature of those discussions?

A. Well, ACT felt very good about the possibility of their tests as a measure that we might use to give us some indication whether or not students might be successful. Obviously, nothing was absolute.

We looked at that, we looked at grades, we looked at a number of things to try to reach some basis for setting a standard. I can't remember all the literature and things we went through at that time and all that we went through with ACT, but all of that conversation led us to our final resolve.

Q. And what action did the Board take following the staff review?

A. The Board, in May of 1976, passed its first policy [3557] along the line. It said beginning with the fall

registration of 1978-79, that no university was to allow a student in with less than a nine on the ACT. And it also stated that if an institution had a requirement higher than that, that it had to maintain that requirement. That was the first action.

Q. What was the Board's educational rationale for this action, Dr. Meredith?

A. Well, there were several items, I guess. One in particular, we knew that from the data available at the time that ninety-five percent of the students in America who took the ACT scored above nine, and that was a pretty significant figure. So we knew that nine was low.

And it's quite—as we began to look at each of the particular scores and to see what would survive, we had spent an awful lot of time studying the fifteen. Fifteen had been the gentleman's agreement. ACT had given us a very clear indication that 15 was a reasonable standard to expect from students if they were going to be successful in a university setting. If you were 15 or above, you had a reasonable chance of success. As you fell below 15, your chances for success fell dramatically.

We looked at all that kind of data. We looked at our survey data to see what might survive. We looked at a 15 and—and we looked at the data from Jackson State and [3558] Alcorn and Valley, and we said, if we go to a 15 we're going to lose seventeen hundred freshmen at Jackson State and that's way too many. Here we are trying to do things to raise quality and we're trying to do things to preserve our black institutions, and you can't go to a 15 because that would take out seventeen hundred potential students at Jackson State. That number was five hundred at Alcorn and Vally, and those numbers were too large.

So we began to go down the scale. What about 14, could

we go to fourteen? The numbers were still too large. And 13 and a 12, and we just worked ourselves down the line, until we finally reached a bottom line of nine which would be a figure that we felt like in our State we could live with. It was a figure that was just terribly, terribly low, if you looked at all the national data and also the data for our State.

The average score in our State at that time was 15 for all students who took it whether they were going to college or not. And here we were saying you could get into the universities in this State with scores as low as nine. We just, I guess, in good conscience, we couldn't go any lower than nine, but also in good conscience in those initial stages, we felt we had to go down as far as nine. And that ended up being the recommendation of the Board of Trustees.

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[3559] A. Okay. Board Exhibit 180 entitled, Rationale of Board of Trustees in Adopting Minimum ACT Score Requirements for Admissions, listed ten items that were prepared at that time, serving as a basis or a rationale for the decision that was reached.

Q. Did you mention item ten in your discussion, please, sir, just a minute ago?

A. No, but that serves constantly and that's an important element and that's why it's listed as a summation element here.

[3560]The Board of Trustee had some comfort in realizing that to have a cut-off score in the State of Mississippi on ACT was not denying young people of the State access to higher education. The State of Mississippi is blessed with having one of the finest junior college systems in the country. I guess probably only Florida comes close to that.

An excellent junior college system.

Any student not meeting the admissions requirements of public universities in this State had access to the junior colleges because their admissions were open, and so no one was being denied. And, of course, once one were to go to a junior college, pick up twelve hours, then they could come in—with a C average, and they could come in as a transfer student to the senior universities. So the alternatives were not closed, by any means.

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[3562] Q. Dr. Meredith, at this time why didn't that Board adopt high school grades as a component of the admissions standards?

A. I received a lot of discussion on the Board staff at that time, but again, a review of the literature at that time period will show monumental concern not only in our State but nationally with the subject of grade inflation. Grades simply weren't meaning as much as they used to mean. They weren't a true reflection of what students had learned.

Grade inflation means that you were giving students a better grade than what one might expect for the amount of information that's been learned. That was a problem in our State. It was a problem nationally. So as the Board staff and the Board of Trustees considered all of this, they just decided to go with a uniform standardized test score, testing procedure and leave grade point average out of it at that time.

Q. Okay.

A. And I should say also just as a kicker on the back of that, that Act at that time told us that they felt very good about the ACT assessment by itself; that you could

use grades and that might help a little bit, but grade inflation was a problem. But that they felt very good about the test being used alone.

Q. Was there any concern with respect to the [3563] comparability of grading within the State?

A. Yes. We, unfortunately, have quite a wide variety of schools, we're a rural State. And the difficulty, of course, as I think the State Department of Education will back this up, particularly that period of time, the difficulty, of course, is from one part of the State to another part of the State, vary tremendously, particularly in the sciences. There would be schools offering chemistry with no labs, white and black schools, not designated one way or the other, and to the point where we didn't feel we could get a good enough picture using grades.

Q. Following this action in May of 1976, Dr. Meredith, what was the next major Board action with respect to admissions standards?

A. Next was in February of 1977 and the Board of Trustees addressed the doctoral granting institutions, that would be Ole Miss, State and Southern, and stated that those three institutions had to use their 15, but that they were allowed to take in students with a 12, 13 or 14 for the summer session of 1977 and if those students came in with those three scores, maintained a two point oh, then they could come on in the fall, but if they didn't maintain a two point oh, they could not.

Q. What was the educational rationale for that action?

A. The institutions pointed out to the Board of Trustees [3564] that there were an awful lot of students, minority students particularly, who had scores of 12, 13 and 14 that they were missing out on, and they wanted the

opportunity to give those students a shot at a comprehensive university.

Q. And could you continue, please sir, with respect to the next major Board action related to admissions standards.

A. The next major action occurred in October of 1977, October 20th, when Dr. Walker Washington, President of Alcorn State, initiated what I thought was a monumental move on behalf of Alcorn State. He came to the Board of Trustees and said, "I want a statement to be made about Alcorn State. I want it to step forward."

Because now we're talking about Jackson State and Valley and Alcorn, all operating under a nine minimum score. And Dr. Washington said, "I want to step forward and start raising the scores at Alcorn on my own, my own initiative, and start moving those forward," to the point where he wanted to move those up [illegible] a year, and I think, by 1980, he would be at 15.

He proposed two conditions on that with the Board of Trustees. He said, "First of all, I'd like a high risk factor of ten percent of my total institutional enrollment," which would be kind of large because he had twenty-two, twenty-three hundred students at that time, and he wanted to allow in each year two hundred twenty, two hundred and [3565] thirty students who had below that score but no lower than a nine, whatever standard he was at.

And then secondly, he asked the Board of Trustees, "If I take this monumental step forward, I would like for you to tell me that you—by taking that step forward, I may lose some enrollment because this is such a big step, and I want you to tell me that you won't let that affect my funding for a couple of years." And the Board agreed to that.

Q. Could you relate specifically the step scale approach proposed by Dr. Washington?

A. Yes, sir. He wanted an ACT score of 11 by the fall of 1978, 13 by 1979 and 15 by the fall of 1980.

Q. And what was the Board action with respect to the request again, please, sir?

A. It was passed enthusiastically.

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[3566] Q. What was the next Board action, sir, with respect to admission standards?

A. In December of 1977, the Board of Trustees passed a policy that allowed all eight universities to have a floor of nine with a five percent high risk. In other words, the comprehensive universities had a requirement of 15. They were now allowed to go all the way down to a nine with a five percent quota.

* * * * *

Q. And what was the educational rationale for that action, please?

A. That there were students—and lots of discussion had [3567] gone on in between here that there were students capable of doing university level work even though their score did not indicate that they were capable. That there were other factors that you had to look at. These students would be exceptions. They would be outside the norm. And it may be that—may be high school grades were outstanding but their score was terrible. It may be that they had strong leadership ability and had shown bright glimpses of academic promise during the high school career but never fully blossomed and maybe felt like now this is someone who has a twinkle in their eye, if you will, someone who has a shot at being successful. So you're going to take a chance, a high risk student. It may be a potential concern violinist who has not been a great

student but has been a so-so student and has scored a nine or a 10 or 11, but this is an opportunity for them to fully develop their skills. Just a wide variety of things like that might be considered.

* * * * *

[3571] Q. Okay. Were there other actions taken in December of 1979 related to admissions?

A. Right. That's when the Board of Trustees initiated its developmental studies program.

Q. What do you mean by developmental studies?

A. That's a euphemism for remedial studies. The institutions, most of the institutions, had in place at that time a remedial studies program which meant as you received students who were absolutely under-prepared in various disciplines, that you had to have in place on a university campus courses that were remedial in nature, that would take a student at the level of high school math and bring them up to a point where they would be ready for college math. The same thing in English and the same thing in reading.

[3572] Q. What was the educational rationale for implementing a developmental studies program?

A. Well, the Board of Trustees realized that even with the ACT requirements, which was terribly low, that they were still getting under-prepared students. The faculty were complaining. We had the same problem of poor graduates. That conversation was still going on. We had students getting into college, trying to take college level courses, and they just weren't prepared.

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[3573] Q. What was the next major action by the Board with respect to admissions standards?

A. July of 1982, the Board of Trustees passed course requirements for entrance into the universities.

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[3574] Q. What circumstances led to this action by the Board with respect to course requirements?

A. Okay. There were a number of things. Even with the ACT requirement, again, too low, even with developmental studies trying to prepare these young people to get a university level education, we were still having the problem of students moving through the universities under-prepared. They weren't prepared for a university level education. We were experiencing budget cuts at the time, dramatic budget costs. We had limited resources. We were spending a million dollars a year for developmental studies or remedial work. And when you have the kind of budget we have in higher education, that kind of expenditure [3575] is devastating, to take care of young people who have not had the proper background.

As a matter of fact, a number equivalent to one-third of our freshman enrollment each year was in—were in remedial courses, and that was just too much.

We had the constant problem of professors complaining about the poor quality of the students that were coming in. And one of the things that happens in higher education, happens in all levels of education is that because educators are humanitarians, I guess. I'm not sure of the answer, but if you give me enough students who are under-prepared, I will start to lower my standards to meet what I have.

I'd like to think, but I know it's not true, that universities will maintain standards right up here no matter what comes at them, and they will just throw them out the door when they don't make it.

But the fact of the matter is that we'll all gravitate to the

level of students we are trying to address. It just happens. We don't like to think it happens, but it does. We all admit it.

Counselors and principals were terribly upset with the universities and had been for quite some time. Their basis premise or their basic statement to us is this: You don't require a college prep route of courses to go to [3576] college, and if you don't require it, we can't make them take in.

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So the Board of Trustees, in a conscious move, said we're going to require these things to get in universities in this State, these course, this wide array of courses beginning four years from now. It gives you time to do it. We're not saying we're going to cut somebody off right now. It gives you time to do it. Now, high schools, make some changes. Start offering these courses if you're not now. You've got time, get them in place. Get these young people prepared. The high schools are going to have to say to the junior highs, strengthen what you're offering, and it goes on down the line. We believed in that strongly.

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[3582] Q. Dr. Meredith, you've related the rationale behind the Board's implementation of course requirements. Have you examined at the University of Mississippi the level of participation in developmental education following the Board imposition of the course requirements?

A. Yes. I had this run-off when I was notified that I [3585] was being called and what one of the topics would be, and I had it run-off beginning with 1980 on through this past year, showing the number of students that we've

been teaching in each of these areas, and that's about it.

Q. What did you find with respect to the level of participation, please, sir?

A. The numbers were pretty significant. I mean pretty steady up until this past fall as it coincided with the new entrance requirements regarding courses. And with that group of new students coming in now who have had this core of courses that were required by the Board of Trustees beginning in the fall of 1986, our English—number of English students dropped by two-thirds, our math students dropped in half, and our reading students dropped, gosh, four-fifths.

Q. Do you consider this drop in level of participation to be significant?

A. Exceptionally significant.

Q. Could you explain why, please, sir.

A. What it says is that more students are now prepared in those areas. Even though the cut-off score of 12 is terribly low, it's saying—because our enrollment has been up now two years in a row, so we know it's not because fewer students are coming, but it's saying that the students who are coming to us now are prepared. They don't have to [3584] have remedial background in order to pursue a university level educatiom. That saves us dollars, it saves us a tremendous number of dollars that we now can redirect into other educational opportunities.

Q. Dr. Meredith, are you familiar with NCAA proposition forty-eight?

A. Yes, sir.

Q. What is that?

A. It's a policy passed by the membership of the NCAA which is, of course, the organization that governs athletics in colleges in this country. It was—and, of

course, the membership is made up of chief executive officers from across the country. Those are typically the voting members, either a chief executive officer or his designee. For the University of Mississippi, I vote, for example.

That said, beginning in August of 1986, that there would be a standard score required for student athletes in order to participate. And that standard score, which was not implemented the first year, was that all student athletes had to come in with 15 on the ACT and a two point oh grade point average if they were going to be allowed to receive a scholarship and play.

They had two incremental steps in putting that is. In 1986, I think you could go as low as a 13 with a two point four, I don't know that exactly, but there was some [3585] increment there.

This past year—I'm sorry. This coming year in August of 1987, you could get in with a 14 and still play and get a scholarship if you have at least a two point oh high school grade point average, or if you have less than a two point oh but you have a 16 on the ACT, you can get a scholarship and play.

But beginning in August of 1988, it's a straight 15 ACT, two point oh grade point average—both of them, not one or the other, but both of them—or you can't get a scholarship.

Q. Under the Board admission standards, Dr. Meredith, are students required to achieve a two point oh in high school?

A. They are not.

MR. STEPHENSON: Mr. Wadlington, would you pull Board Exhibit 201, please.

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Q. Dr. Meredith, are you familiar with a publication entitled, "The Nation at Risk—"

A. I am.

Q. "—an Imperative for Educational Reform?"

A. Yes, sir.

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[3586] A. This is the result of a National Commissions on Excellence in Education that was commissioned, I believe, by then Secretary of Education Terence Bell, and for the purpose of examining education to America: What was wrong, what needed to be done.

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[359C] One of the recommendations that came out of this was to raise admission standards.

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Q. Could you read specifically the recommendation that appears?

A. It's number two at the bottom of the page. (Reading): Four year colleges and universities should raise their admissions requirements and advise all potential applicants of the standards for admission in terms of specific courses required, performance in these areas and levels of achievement on standardized achievement tests in [3591] each of the five basics.

And it talks about the five basics earlier: English, math, science and so forth.

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Q. And I wanted you to review that recommendation, please, sir, and relate whether you saw any correlation there with respect to the State of Mississippi.

A. (Reading): We recommend that schools, colleges and universities adopt more rigorous and measurable standards and higher expectations for academic performance and student conduct and the four year colleges and universities raise their requirements for admission. This will help the students to do their best educationally with challenging materials in an environment that supports learning and authentic accomplishment.

And authentic accomplishment, of course, that refers to grade inflation.

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[3602] Q. Let's move now, Dr. Meredith, if we could, to another area, that of academic program review, please, sir. During your tenure with the Board, were procedures ever implemented for academic programs from all institutions?

A. Yes, sir, they were.

Q. Could you state approximately when these proceedings were implemented?

A. There are three of those: Two during my tenure and one after I left. One dealt with the review of all doctoral level, excluding engineering and nursing and a few other professional programs, pharmacy and so forth, but a review of those started with the Board initiation, calling for that in the summer of 1980, as I recall, and concluded that in April of 1984. There was some follow-up on that, but those are the primary...

And then the third one was a rereview of doctoral programs that occurred in the last couple of years.

Q. Would you explain, please, sir, the circumstances which led to the initiation of a program review?

A. I think it was stemming from all the same kinds of [3603] things we have been talking about with quality of

students, that with the great influx of students in the late sixties or mid to late sixties and early seventies, as institutions had grown so rapidly the concern over the quality of students coming out, the concern over the kinds of students that were in the institutions already coming from professors, all of those factors lumped together was causing the Board of Trustees to say in an August of 1980 meeting—I remember Mr. Charlie Jacobs making that motion, that he just felt that it was necessary for the Board of Trustees to stop and take a very critical look at all of our academic programs and to assess the quality and to see whether or not we were operating a quality operation, and he wanted that done as quickly as possible. And that initiated the process.

Q. What steps were taken, please, sir, to implement the review?

A. Well, the first thing that had to be developed—well, two or three things had to be developed, I guess, simultaneously. One was a comprehensive review of the literature. And I had in my office a file cabinet full of what every one everywhere had ever done about program review, and I had all their instruments. I knew exactly what they looked at. The whole works. And from that, we began to compile a document to review programs that would say, here are the kinds of things you ought to look at, and that began [3604] to be developed into a review document. And we would feed that to the institutions, all eight institutions, and say, okay, what's wrong with this, what's missing, what should be added, what's here that's really irrelevant that shouldn't be there? And that give and take went on for awhile until we started to level down to a document that every one could generally agree on.

Once we reached that, we decided and we already had in place a movement to run a pilot review program. This was going to be such an extensive project that we felt like we needed to run a pilot review on a few programs initially and determine if major changes or minor changes needed to be made before the big project took off.

And so with the pilot review on three particular areas, French, chemistry and English, ones so you could have a standard area that you're not going to get rid of like English, chemistry involved labs and so forth, and French was a small concentrated sort of discipline. That would give us a flavor for the breadth of an institution.

And we conducted the pilot review. We used outside consultants to evaluate the information and then made a recommendation to the Board of Trustees as a result of that. And that was the first phase of the entire program review process.

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[3608] Q. What were the results of the academic program review, Dr. Meredith?

A. Approximately one-third—now, let me clarify, too, counselor, so we don't get confusion rolling in here, that this document—these documents cover only the review of those programs below the doctoral level, and this occurred between 1980, if you will, and 1984, April. That's what that covers.

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But the results, overall, when you combine all this together is that approximately one-third of the degree programs available in the State of Mississippi at the eight public universities were eliminated.

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[3609] Q. Have you reviewed the numbers of programs eliminated?

A. Yes, sir. I have.

Q. How many total were eliminated, please, sir?

A. Four hundred and sixty-seven academic degree programs were finally eliminated through all the various processes and procedures.

Q. Do you have the break-out by institution?

A. I do.

Q. Could you state, please, sir, the number of programs eliminated by institutions?

A. Alcorn State, there were eight. Delta State, thirty-one. Jackson State, fourteen. Mississippi State, eighty-two, MUW, sixty-four. Mississippi Valley, twenty-nine. University of Mississippi, a hundred and fifty-one. And University of Southern Mississippi, eighty-eight.

Q. Have you made any calculations, please, sir, with respect to the percentage of total programs eliminated borne by each institution?

A. Yes, sir, I have.

Q. Would you relate those, please, sir?

A. Of the four hundred and sixty-seven programs [3610] eliminated, at Alcorn, the number there represented two percent. Two percent of the four hundred and sixty-seven programs were eliminated at Alcorn. Delta State was seven percent. Jackson State, three percent. Mississippi State, eighteen percent. MUW, fourteen percent. Mississippi Valley, six percent. University of Mississippi, thirty-two percent. University of Southern Mississippi, nineteen percent.

Q. How were the programs categorized during the review process?

A. There were four primary categorizations. One was commendation. That meant that the consultants found that this particular program was nationally competitive, it was that good. That was a rarity. There were only ten in the whole system found to be in that category.

Another category was approval. That simply meant that your enrollment is okay. You've got a good quality program in place. If you look at faculty, you look at library and all supporting materials, you have a good program in place. Approval. Nothing else for you to do, just keep on doing what you're doing.

Marginal was another category. Marginal said—I'm sorry. Well, let me go on. I can get out of line here. Marginal said, the quality in this program is poor. It may be faculty, it may be instructional materials, lack of lab, it may be a number of items, but the quality of this program [3611] is so poor that changes must be made. And they were given a timetable to accomplish those changes.

Another category was approval pending. Approval pending meant everything is in place, you've got the faculty, you've got the facilities, you've got the labs, all those things; but what's missing is an adequate number of students. Your enrollment is too small. Make a concerted effort to get your enrollment up in this particular program. Everything else is in place.

Then there were actually five categories, I meant. The last category was phase-out and that meant that all of this is so bad that you need to eliminate this program.

Q. Do you have any recollection, sir, concerning the manner in which the categorizations were grouped by institution?

A. I do.

Q. Can you just relate those briefly, please, sir?

A. Okay. In the approval category, fifty-two percent of the programs at Alcorn got an approval status. Let me see if I'm in the right direction here. I've scribbled on this page, and I need to get my lines straight. Four percent of all the approval programs were at Alcorn. Of all programs approved, four percent were at Alcorn. Ten percent of all approved programs were at Jackson State. Twenty-two percent at Mississippi State, and five percent at MUW.

Three percent [3612] at Mississippi Valley. Eighteen percent at Ole Miss and twenty-five percent at Southern.

And then the other major category was marginal. Everything mostly fell in approved or marginal, and I'll give you as much as you need here, but I don't know if I have it all calculated, but I do have the marginal calculated. Twenty-seven percent of all marginal programs, they were all programs found to be marginal were at Alcorn. Ten percent of all programs found to be marginal were at Delta State. Nineteen percent at Jackson State. Three percent at Mississippi State. Nine percent at MUW. Twenty-nine percent at the Valley. Three percent at Ole Miss, which represented two programs, and then none at Southern.

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CROSS EXAMINATION

[3633] Q. Yesterday you gave us some numbers in terms of the amount of programs that were eliminated by the Board as a result of the academic program review, and also the number that received the marginal evaluation and the percentage of programs that were approved?

A. Yes.

Q. Now, directing your attention specifically to the numbers that you provided with respect to the marginal evaluations, it shows, does it not, that the three traditional black institutions had the greatest number of programs rated marginal?

A. Yes, ma'am.

Q. And as a result of that, that those programs were eliminated, is that correct?

A. No, ma'am

Q. Okay.

A. As I stated yesterday, "marginal" meant that your programs are sub-par quality, and the Board of Trustees then, as a result, set a path to improve the quality.

There were certain things you had to do. Maybe it was an accounting program, and you only had one doctorate teaching in your entire accounting program, and the Board of [3634] Trustees would say, you need to hire one or two by the year 1987 or 1986 or, you know, it was that kind of thing. There was a path set forward, but they did not get eliminated because you had a marginal status.

Q. What is—Once the program review had identified the deficiencies with respect to the programs that received a marginal evaluation at the three traditional black institutions, did the Board undertake any efforts to provide whatever resources were dictated to assist those institutions in strengthening those programs?

A. The Board did not provide resources for any institution, white or black.

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[3638] MS. YOUNGER: Mr. Clerk, could you get for the witness, Board Exhibit 263.

A. I don't have that.

(Document passed.)

MS. YOUNGER:

Q. Now, Dr. Meredith, could you turn to Page 1 where there is Chart A of that document?

A. All right. Page 1.

Q. Yes, 1.

A. Okay.

Q. All right.

A. Chapter 1.

Q. Could you turn to Page 1 of Chart A.

A. All right.

Q. Chart A indicates the new programs and degrees from [3639] 1976 through 1986?

A. Right.

Q. That were implemented at the eight universities?

A. Yes.

Q. Could you review Chart A and tell me whether or not the three traditionally black institutions received fewer new programs than the TWI's during this ten year period?

A. Fewer than who?

Q. The traditionally black institutions, Alcorn State University and Mississippi Valley and Jackson State.

A. Fine. Jackson State and Delta State received the same number. The "W" received the same number. All received fifteen new programs.

Alcorn received two and Valley received six. Ole Miss received fourteen, Southern sixteen and Mississippi State had the most at twenty-two, so it looks like five out of the eight institutions had about the same number—Yes, and one—Mississippi State had more and, two, Alcorn and Valley had fewer.

Q. And Jackson State tied third with Delta State?

A. Delta State and the "W".

Q. Did the "W" have seventeen programs, is that not correct?

A. I may have misread.

Q. Two more programs than Delta State and Jackson State?

[3640] A. I am sorry. I had written that down differently. One more program than was gained by the University of Mississippi.

Q. All right. Okay.

A. Who had fourteen.

Q. Dr. Meredith, now we have just gone through the new programs that were approved for the various institutions.

Specifically, with respect to the traditional black institutions, how does this—Their programmatic expansion in the area of new programs comport with the objectives of the Plan of Compliance which states that the traditionally black institutions would have priority in receiving new degree programs?

A. I think to answer your question, you have to consider two things.

One, you need to know that institutions initiate all new program requests, so that these number that you see means that those institutions initiated those requests. The Board of Trustees did not go to Mississippi State on any of those twenty-two programs and ask them to come forward with those programs.

If Alcorn has two new programs that means that Alcorn only asked for two new programs in ten years.

Ole Miss got fourteen. That means that Ole Miss came forward with fourteen and asked for fourteen.

[3641] Jackson State got fifteen.

Right on down the line. That is how those are initiated. So, I think that is important to know.

I think that is the main point. I had a second point, but it has escaped me.

Q. Dr. Meredith, doesn't this exhibit show the number of programs that were approved. It does not indicate the number of programs requested by an institution, is that not correct?

A. This is true.

Q. So, from this document, we don't have any way of knowing how many programs Jackson State requested, and how many programs Alcorn requested, is that correct?

A. From this document?

Q. Yes or no.

A. From this document?

Q. Yes.

A. That's right.

Q. We only know how many programs were approved?

A. That's correct.

Q. Okay.

A. The other information is available.

Q. Upon the completion of the academic program review by the Board, did institutions remain in their – Remain in the relative positions that they were in prior to the program review?

[3641[A]] A. You need to define "positions".

Q. Okay. I will give you an example. If prior to the academic program review Mississippi Valley offered hypothetically thirty-five programs, and as a result of the review, Mississippi Valley offered seventeen programs, and you can use that same anaology for the other eight institutions, as a result of the program review, would institutions remain in the same relative position that they occupied prior to the review program?

A. Counselor, we did not enter program review – I don't know the answer to that, because that was not a purpose of the program review, was to jerrymander such that everybody's relative position stayed the same.

The purpose of program review was to assess every program, and from that determine the quality of that program, and then to make adjustments.

If changes needed to be made and improvements needed to be made, that would take place.

If programs needed to be eliminated because they were so poor, that would be done.

If they needed to be commended because they were so good, then that was done.

If they needed to be commended because they were so good, then that was done.

But there was no jerrymandering taking place to make sure that, well, let's take one away from them and give them one so that we can keep the positions the same.

[3642] I quite frankly cannot tell you in all honesty what that relative position comparison is. That was not an objective in this. The objective was academic, to find out where the quality was and to upgrade those that did not have the quality unless they were just so bad that you could not upgrade it or if there was such a degree of duplication in that area already that that institution should not expend the resources to upgrade, so I cannot answer that.

Q. So, it is your testimony that the Board did not undertake any special efforts to assist these institutions in upgrading their programs once they were viewed as being marginal or somehow deficient?

A. The Board of Trustees in my—

Q. Is that your answer?

A. In my remembrance, the Board of Trustees did not make any special allocation of funds to any of the eight universities to upgrade those programs that were judged marginal.

The institution was to shift resources inhouse to do that.

Q. Now, what was the highest rating that a program could receive during the review process?

A. Commendation.

Q. All right.

A. And that was recommended by the consultants.

[3643] Q. Did any of the programs at the traditionally black institutions receive a rating of commendation?

A. No, there were five institutions that did not receive any ratings of commendation, and of those five, the three historically black were among those five.

Q. Could you identify the other two white institutions?

A. M.U.W. and Delta State.

* * * * *

[3652] Q. Now, what factors did the Board utilize in determining how leadership roles would be assigned to its eight institutions?

A. Well, that is six years ago. Let me see if I can recall some of that.

* * * * *

[3653] Q. Do I need to repeat my question?

A. No. As I recall it—and I will leave out some things here because it has been some time ago—But we looked at the makeup of the institutions at that time in terms of enrollment and faculty and resources that they were putting into particular disciplines and areas. We looked at areas in which they had traditionally had strength. The research with which they were invovled.

[3654] That is just to give you an example, those kinds of things to determine mission.

Q. Did the mission statement preclude the enhancement of the traditional black institutions with respect to their level and scope of programs?

A. What was the word you used, "prohibited" or "promote" or what?

Q. Prohibit, preclude.

A. It put boundaries around all institutions.

Up until that time all institutions had been operated under the premise that they needed to do everything for everyone.

We were a State of two and a half million people and dwindling resources, and the Board of Trustees felt that it needed to give each institution a direction, and boundaries as well, and utilizing all of the elements that you see in the mission statements that the State would be covered.

All of those things would be addressed that this State needed to be about and needed to have, but, yes, institutions did have boundaries.

You need to concentrate your resources on certain things and quit trying to just keep on doing more. That was a problem.

Q. Isn't it true that the classification of Alcorn State University and Mississippi Valley as regional universities [3655] ensured that the level and scope of those programs be limited?

A. They would not go beyond the master's degree and that they would have a limited number of master's degrees available.

The same designation being given to M.U.W. and to Delta State.

Q. But, Dr. Meredith, at the time that the mission statement was implemented, isn't it true that Delta State, a regional university, already offered degrees at the specialist's and doctorate level?

A. Yes, sir.

Q. Isn't it also true, at the time that the mission statement was adopted that Mississippi University for Women also offered courses—strike that—offered programs beyond the master's level?

A. At the specialist's level. Delta State's program, doctorial program was to be re-reviewed in, I believe, 1984 or 1985 because it was outside of the norm of what they expected from regional universities.

If it survived that re-review, it could remain, but if it did not, it would go.

It was re-reviewed, as I understand, and that was after I left, and it did survive that re-review and was allowed to remain. It is constantly being monitored now by the Board staff, I understand.

[3656] Q. Well, isn't it true, that mission statements have the effect of maintaining the status quo toward institutions, such as Alcorn State University and Mississippi Valley and Jackson State with respect to their program offerings?

A. As it does for M.U.W. and Delta State.

* * * * *

[3662] **CROSS EXAMINATION**

MR. PRESSMAN:

Q. Dr. Meredith, you referred to pilot program reviews including the area of chemistry, is that right?

A. Yes.

Q. What elements of the chemistry program were investigated?

A. All elements. You know, I could pull a document and just start going through that, but just everything one would look at in terms of a review in an academic program area were reviewed.

Q. What ones can you remember?

A. Faculty, facilities, quality of the students in the [3663] program, the accreditation was a factor.

Q. Library?

A. Library was looked at.

Q. Equipment?

A. Yes.

Q. Okay.

A. Labs.

Q. Do you recall a summary being prepared of the consultants' findings?

A. I do.

Q. Could you tell me if what I read is from the summary?

"Although the consultant did not recommend the discontinuance of any of the four programs reviewed, the staff urges the Board to immediately suspend further enrollment into the degree program at Mississippi Valley State University. The number of participants has increased recently, but this activity does not warrant spending the resources necessary by Mississippi Valley State University to upgrade its program to an acceptable level. There are obvious immediate equipment and library needs. These two categories of need are readily apparent in many other areas at Mississippi Valley. Existing programs can easily handle the number involved at Mississippi Valley. There is an excellent program available at Delta State University, only forty miles away, and there are two other historically black [3664] institutions with much stronger programs."

A. That's correct.

Q. Did you write this?

A. I did. A master's program at Mississippi Valley – I mean at Delta State in chemistry was also eliminated.

I don't think you read quite that far, but it was also eliminated.

* * * * *

[3667] Q. What definition of "program" did you use?

A. I did not write that.

Q. Well, what definition of program did you use when you concluded that a hundred and fifty-one were elminated?

A. A program is a series of courses aligned to form a formal degree program that will lead to an academic degree. It is a recognized set of courses and it is approved by the Board of Trustees, and that is outlined in the academic programs inventory. I think it is part of the record.

I cannot explain to you what was used in 1974 or before I arrived.

Q. On the subject of programs, were there any instances of transferring programs from one campus to another campus in the period 1976 to 1986?

A. There was one transfer from one institution to another institution, but not from a campus, and that was the transfer of the baccaluareate nursing program that was run by the University of Southern Mississippi to the Alcorn State University in Natchez.

Q. Okay.

[3668] A. That occurred about 1977, 1976, somewhere right around in there. I don't recall any others.

Q. You testified about the overall results of the program review in terms of grading of the programs at each institution and with respect to your category of marginal at Alcorn State University about half of the programs were marginal, a little less than half?

A. That's correct.

Q. And at Valley somewhat over half were marginal.

A. That's correct.

Q. And the next highest was M.U.W. with sixteen percent marginal?

* * * * *

[3676] Q. Now, in terms of qualification for higher education, you spoke about low ACT scores of students who were in Mississippi universities in your testimony, is that right?

A. Yes.

Q. Would you agree that in the main, these low ACT scores reflected the kind of educational opportunities that those students had been provided by another branch of the State Government; namely, the system of elementary and secondary education?

A. I think it reflected more than that.

Q. What else?

A. I think it reflected some of that. I think it also reflected the lack of demand on students in the State of Mississippi.

Higher education certainly was not making any demands as far as entrance standards were concerned, so students did not have to produce more.

Our high school graduation requirements as they are now and are hopefully about to change, were so low that you could get out if you had any desire at all to get out of high school and graduate.

I think all of those things combined lead young people [3677] to do just what they had to do when the result was lower test acores.

Q. Well, were you aware at that time that the pattern of black test scores were lower than white test scores by a substantial degree?

A. Sure. As obvious from the surveys.

Q. Well, do you think that the demands were somehow lower on black students?

That the factor you mentioned would explain the difference in the scores?

A. I think there are two or three factors there.

One factor being that black students have the same problem today. By the way, I just came back from a conference in February, and I spoke at the conference and stayed over to hear a portion on retention of black students in universities, trying to get more black students to go to universities.

One of the major problems facing black students across the country is that they are not being counseled by black or white counselors to think in terms of college as a goal. They are being counseled as a goal to get out of high school, to try to make it to high school. No one is setting higher goals for them, and as a result, they are not taking the right courses to go on to college. It is not their goal for their life to go to a university. That is a major problem. [3678] Young people will do what they are asked to do. And the other fact of that is ACT data was clear from ACT, nationally as well as Mississippi, blacks do not score as well on the ACT standardized test as on the SAT or whatever.

So, we knew that that was a problem. That is why the scores were put as low as they were.

Q. Well, let me read to you from an ACT publication. This is Board 186, dated January of 1986, ACT. ACT Issuegram.

It says, "The lower average ACT assessment scores earned by minority students are indicators that on average the past educational opportunities and experiences of most minority students are inferior to those of majority students. This relationship between the quality of educational experience and achievement has been thoroughly documented for students across all racial and cultural backgrounds."

Do you agree with that statement?

A. Yes. I do not think believe that it conflicts at all with my first statement.

I think it directly coincides with that.

Q. Do you agree with this statement?

A. As it relates to my first statement, yes. I would agree with that.

Q. Well, let me put it in front of you.

A. It might be better.

[3679] (Document passed.)

THE WITNESS: What is the date of this?

Q. January of 1986. January.

A. Okay.

Q. Do you agree with that statement?

A. It depends on what ACT meant. I am not trying to split hairs with you, but it depends on whether ACT is talking about—when it is talking about past educational opportunities and experiences, if they are talking about by choice or whether it is available or not.

For example, my first statement that is why I am referring back to that, the opportunities are there for black young people across the country to take chemistry and physics. They are not being counseled to do so, because their goal is not to go to college where you are going to have to have those kinds of courses.

So, I would disagree with the opportunities section as stated in 1986. If this had been dated in the '60's, I probably would have agreed with that; but in 1986, I would disagree with the opportunities part, as far as we are concerned here.

I don't know about nationally. This is a national issuegram, I assume, but their experiences are less because they are being counseled to do less.

Q. You disagree with that as a statement in the 1970's, [3680] when the Board was acting on the admissions standards?

A. Early '70's, I would agree with it. And '60's, I would agree with it. From what I understand, because I was not here.

You know, I passed through here to get a doctorate for two years in the late '60's, and then gone, so I cannot answer that definitively.

Q. Students who were graduating in 1977 and 1978 in Mississippi would have experienced—black students would have experienced their first four or five years of education in segregated schools, wouldn't they?

A. In some instances, that is true. Not all of Mississippi was segregated prior to 1970.

Q. This question of counselors and counseling students in terms of courses, are you talking about counselors in Mississippi high schools?

A. Talking about nationally, and that would include Mississippi high schools, I assume.

Q. Okay.

A. I am talking about national information gathered from what is called the College Board. It does the SAT.

Q. Do you see this as including in Mississippi the counseling of black high school students by white counselors?

A. I think I said white and black.

Q. Okay.

[3681] A. There are a number of black counselors across the State, as I am sure you know.

Q. Okay.

A. And understand that that's not my data or information.

Q. But it is your opinion?

A. It is my opinion.

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[3695] **REDIRECT EXAMINATION**

MR. STEPHENSON:

Q. Dr. Meredith, on cross-examination I believe you [3696] mentioned five hundred thousand dollar appropriations to Alcorn State University and to Mississippi Valley State University.

Would you explain the circumstances which prompted these appropriations and the purposes for which these appropriations were made?

A. Well, as a result of the Compliance Plan, you know, there were a number of items listed in there, and those were refreshed earlier.

The efforts to be made by the Board of Trustees.

One, in securing Compliance Plan funds each year for the universities, so each institution would have a chance or have the opportunity to attract other race students and other race faculty members and all of that.

And the Board of Trustees did that and that money has been coming ever since. The Board of Trustees also, as indicated in that Plan, made a particular effort in the mid '70's—I don't remember the exact year, 1977—I don't know, whatever—To ask the legislature for specific dollars for Alcorn and for the Valley to give accreditation; that is, accreditation for the teacher education program, five hundred thousand dollars each. Alcorn.

Was successful first, as I recall, and then Valley obtained theirs a little later on, but that was a successful effort.

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[3698] **TESTIMONY OF JOSEPH S. ANZALONE**

THE WITNESS: My name is Joseph Samuel Anzalone.

* * * * *

DIRECT EXAMINATION

MR. STEPHENSON:

* * * * *

A. My employer is the American College Testing Program.

Q. And what is your job title at that organization, please, sir?

A. I am the Assistant Vice President and the Regional Director for ACT's southeast region.

Q. And where are you headquartered? Professionally, where is your office, your ACT office?

A. The National ACT office is in Iowa City, Iowa.

Q. And your personal office?

A. The ACT Southeast Region Office is in Atlanta, Georgia.

[3699] Q. All right. Would you relate, please, sir, your formal education experiences since high school?

A. Since leaving high school, I enrolled first in the University of Southern Mississippi, was there from 1952 until 1956, earned a bachelor of science degree, went into the military for my obligation there for several years.

Later earned a master of science degree in college counseling from the University of Southern Mississippi, and eventually the doctor of philosophy degree in higher education administration from Florida State University.

Q. And would you provide the Court, sir, please, with a brief overview of your employment background following your securement of the bachelor's degree?

A. Well, as I indicated, I initially went into military and served my obligation there; left the service and went back to Southern Mississippi for the purpose of going to graduate school, but wound up being employed there as an admissions counselor.

From that position, eventually went to Tallahassee, Florida, where I served as a research assistant in the Office of Academic Affairs of the Board of Regents of the State University System of Florida.

I returned to Southern Mississippi from that position as Director of Admissions.

Q. All right.

[3700] A. In 1968, I left the University of Southern Mississippi and joined the staff of the Southern Regional

Education Board in Atlanta as a program associate in the Institute for Higher Educational Opportunity.

Q. Okay.

A. I later became Associate Director for Programs in that same institute at Southern Regional Educational Board.

Q. Okay.

A. Following service there of about five years, I joined The American College Testing Program as a Regional Director.

Q. And have you been with ACT ever since?

A. I have been with ACT since October of 1973.

Q. Dr. Anzalone, let's return, please, sir, to your four years at the University of Southern Mississippi, would you describe in a little more detail what you did in the area of college admissions?

A. In the period of 1960 to 19– through 1964, I was first an admissions counselor, and in that responsibility processed application forms, provided information to prospective students, talked with high school counselors, worked with other college admissions staff in the State in the– In the broad area of student–Student enrollment.

I later assumed responsibilities there as Acting Director of Admissions and eventually as Director of Admissions. At which time, I was responsible for the general [3701] operations of the undergraduate and graduate admissions office.

Q. You indicated also, I believe, Dr. Anzalone, that you worked for the Board of Regents University System of Florida?

A. That's correct.

Q. Did your–Did you have any duties and responsibilities with that entity in the area of college admissions?

A. Yes. I was in Tallahassee for the particular purpose of pursuing graduate study and was offered an opportunity to join the staff of the Board of Regents because they did not have anyone on staff at that time who came out of a college admissions background.

They were very concerned about some of the admissions issues in the State at that time, so I had the opportunity to work with them in some research projects.

Q. Could you relate briefly representative examples of the research projects on which you worked while you were with the Board of Regents?

A. Yes, I can. There was considerable concern about the very, very, very rapidly increasing enrollment in the State University System of Florida at that time. That was not peculiar to Florida in the 1960's.

And there was considerable opinion that students were filing applications for admission to more than one college or university. So one of my research projects involved

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[3702] Q. And I believe you indicated that you returned to the Unviersity of Southern Mississippi as Director of Admissions.

What were your duties at that time?

A. I actually returned at the end of 1966 as Director of Admissions and as Assistant Professor of Education.

In addition to my administrative reponsibilities in managing the admissions office, I also organized and taught [3703] two advanced graduate level courses.

One in the history and development of American higher education, and the other was in administration in higher education.

* * * * *

Q. And what were your basic duties with SREB?

A. I joined the Southern Region Education Board and its Institute for Higher Educational Opportunity primarily to work in the area of expanding opportunities for black students, in both historically black and in predominantly white institutions in the SREB states.

* * * * *

[3704] Q. Could you relate, please, sir, the states in which you have consulted for or made presentations with respect to the ACT assessment during your tenure as Regional Director?

A. I originally had responsibility for working in West Virginia and in Washington D.C. and in the State of Virginia for ACT. I did that for about a year. The majority of my work was in West Virginia.

During that time, I met with admissions officers, I met with staff of the governing board for the public higher education in the state, met with other association individuals to, in essence, describe and report on ACT assessment and other data available on West Virginia students.

Pursued similar kinds of activities advertise in Virginia.

Most of my work in Washington D.C. at that time was with two or three colleges that were using ACT's financial aid services as a way of gathering data to award financial aid dollars to their students.

[3705] I moved from that geographic assignment to the states of Florida and South Carolina and Virginia, still, I believe. Again, the duties were quite similar, to work with educators, to work with schools, with institutions, with governing boards and state agencies and associations, to make them aware of ACT programs and servies and how indeed they might be useful to them.

Q. All right. Have you consulted in any additional states beyond those that you just mentioned?

For example, Mississippi or Tennessee or others?

A. Yes, yes, sir. Those are obvious examples. As I continued to function as a Regional Director in the southeast, I eventually moved into the states of Mississippi and Tennessee, continued to do some work in Virginia.

Mississippi and Tennessee are two of the states in the southeast that for a good many years have been involved in the ACT Assessment Program and ACT's financial aid services and other services which we offer.

* * * * *

[3706] Q. By way of example, Dr. Anzalone, would you please identify several examples of consultation with state university systems concerning utilization of the ACT assessment in admissions standards and placement procedures.

Now, in which you have participated fairly recently?

* * * * *

A. All right. I have been meeting within the last two years at their invitation with the Committee on Guidance, Admissions, Placement and Performance of the Kentucky Council on Higher Education. This is an advisory committee to the [3707] Council which is made up of college admissions officers, high school representatives, State Department of Education representatives in Kentucky, designed to monitor the implementation of the new precollegiate curriculum requirements in Kentucky.

* * * * *

[3708] I have had opportunity more recently to work with staff of the University System of Georgia in two capacities. Since February of 1984, we have been engaged in dialogue regarding the possible use of the ACT Assessment Program for those thirty-four institutions, in addi-

tion to or as an option for students so that they would not have to take the scholastic aptitude test, so that was one area.

That relationship resulted in a decision by the Board of Regents in September to adopt the ACT Assessment Program for such use.

Q. Now, Dr. Anzalone, have you lectured at professional meetings or conducted workshops and seminars over the years concerning utilization of the ACT assessment?

A. Yes, I have.

Q. How many?

A. I would estimate that there have been several hundred occasions over the last twelve, thirteen years, where I have [3710] some, of course, that have been more recent than that period.

MR. STEPHENSON: Your Honor, we tender Dr. Anzalone as an expert in the area of college admissions with emphasis upon utilization of the ACT assessment.

THE COURT: Does the Government wish to voir dire on this area?

MRS. JOHNSON-BETTS: No, Your Honor.

THE COURT: The Private Plaintiff?

MR. PRESSMAN: No.

THE COURT: Very well. The witness will be accepted as qualified to give opinions in that area.

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Q. Dr. Anzalone, we have mentioned several times this morning the term ACT assessment. What is the ACT assessment?

A. Essentially, the ACT assessment is a rather comprehensive system for collecting and analyzing and reporting data helpful to students as they plan for post secondary education.

* * * * *

[3711] A. There are several major components of the ACT Assessment Program. Probably the best known are the battery of tests typically referred to as the ACT test, English, mathematics, social studies and natural sciences.

* * * * *

Q. What are the ACT tests designed to measure?

A. The ACT tests are designed to measure developed academic abilities that are deemed important for success in college.

* * * * *

[3712] Q. How many states are utilizing the test today?

A. To some extent every state in the nation has at least an institution that is making some use of the data in some way. The typical way probably, though, of indicating that is to—Is to make a reference to Department of Education—U.S. Department of Education information, which revealed last year, I believe, that the ACT was the predominant admissions test in twenty-eight of the fifty states.

In addition, in several other states, there is very high [3713] ACT test volume. For example, in Texas and Florida.

Q. For example, how many students were tested the past year?

A. Somewhere over a million.

Q. We mentioned earlier, Dr. Anzalone, the sub-test. Could you explain to the Court what the composite score is on the ACT assessment?

A. Well, there are four tests in the ACT assessment battery. The composite score is the average of the score of—Scores of those four tests.

Q. And would you describe briefly, please, sir, the procedure followed in the construction of test items?

A. Gee. The construction of the ACT Assessment Program is a very, very detailed process. It typically takes place over a two to three year period.

It begins with the development of technical specifications for test items. Those specifications are written. Item writers are invited to submit items that meet those test specifications under some carefully controlled instructions from ACT.

Those items are submitted. They are possibly refined, eventually tried out, eventually gone into a pool of items. They are reviewed for cultural or ethnic bias, reviewed for sexual bias and eventually they are drawn from that pool to create new forms of the ACT test.

[3714] Along that way, the ACT organization, through its test development division, monitors secondary school curriculum, monitors in particular freshman year curricular offerings and that is done both through the development of the Test Development Committees, made up of knowledgeable experts in those curricular areas, and by the selection of knowledgeable individuals who are indeed the item writers.

* * * * *

[3715] Q. Dr. Anzalone, do you have an opinion as to the educational reasonableness of the Board's admissions standards, including specifically the utilization of the ACT assessment?

A. I do.

Q. And what is that opinion, please, sir?

A. My general opinion is that taken in their totality, the Board's admissions standards, including the use of the ACT Assessment Program results appear to be reasonable.

* * * * *

[3716] Q. Dr. Anzalone, excuse me. When I interrupted, you were about to relate the bases for your opinion, and I believe you were referring to Board Exhibit 183, the Admissions Standards, February of 1986?

[3717] A. Yes.

Q. Would you state the bases for your opinion, please, sir.

A. Well, I reviewed the document. Particularly, I think beginning on Page 4 under the Admissions Standards section. I noted the initiation of admissions standards related to high school units required as an indication of preparation for university admission in Mississippi.

As I turn the page, I particularly noted that the units are broken down into English, mathematics, science, social sciences. Those particular curriculum breakdowns, of course, are the very areas that are sampled by the ACT Assessment Program approach.

The English usage testimony, the mathematics test, the natural sciences test and the social studies test. Indications again, of course, that it is very reasonable that the Board prescribes a precollege curriculum that would be appropriate for students in high school to complete, if indeed, they are planning to enter university studies.

Q. All right.

A. As I continued that review, there are indications that the Board allows, in implementing that previous requirement, allows for deferrals as they move on through this academic year.

I believe that they would cover essentially the mathematics and the sciences areas and perhaps one other. [3718] I think – My own margin notes indicate to me that the Board's decision to move in this direction with a specific pre-college curriculum is beginning to have a positive impact on students' readiness for the studies. There is some data, for example, that indicates Mississippi students and national students who are completing such

core requirements are performing somewhat higher on the ACT Assessment Program than students who do not complete core preparation.

Q. You have mentioned, I believe, data.

* * * * *

Q. I show you Board Exhibit 170. Dr. Anzalone, I ask you, sir, if you have seen that document before?

A. I have.

Q. Does that document bear any relationship to the opinion of reasonableness which you have just related?

A. It is an indication that students who complete such core requirements tend to perform at higher average levels on the ACT assessment than students who did not.

Q. As—Could you highlight, for example, please, sir, what is reflected by that document that leads to your conclusion, as it relates to the scores?

[3719] A. I think it is particularly important to note that this indeed is data on Mississippi students. We are talking about the very recent graduating class of just last year, and on the front page of the document, the data are displayed irrespective of core or noncore and so what you get are ethnic or other break-outs on mean scores.

When you go into the middle section of the page, you can then begin to make some comparisons between black students, white students, others, who indicated that they had completed the core and that, of course, was a part of the assessment program data collection.

Finally, at the bottom of the page under the same auspices, those students who had not completed core, so we have the total group and we have two sub-groups, those completing core and those who did not. It is obvious that those students who completed core had higher mean scores on ACT assessment than those who did not.

Q. Would you contrast based on Board Exhibit 170,

please, sir, the ACT scores as between students who completed the core and those who did not?

A. For example, if we use—If we use the totals, black students who took the ACT and indicated that they had completed the core had a composite score of fourteen point three. Those who had not completed the core had an ACT composite score of only ten point eight.

[3720] For white students, those completing the core, nineteen point nine; those who indicated they had not, fifteen point two.

Q. Those numbers appear, Dr. Anzalone, under a column headed Mean.

What is the mean? What does that term mean?

A. The mean is the average of the scores in the English natural sciences, math, social studies tests.

Q. Has your own organization done any study or analysis of the significance of utilizing pre-college curriculum as a measure of academic achievement?

A. We have been—We have been tracking for a number of years some course pattern. For example, during—and I guess extending on into the 1980's, we provided a question in the ACT Assessment Program student profile section for the student to identify what kind of high school course pattern he or she either completed or was in the process of completing, and we have noted for many years that those students who have indicated that they were completing a pre-college curriculum or college preparatory curriculum had, as one might expect, higher mean scores on the ACT test, and certainly on the composite.

As we entered the '80's and began to investigate the issue of preparedness for college and, obviously, we were not alone in that, there were a number of national reports [3721] that were addressing the issue of student performance or of quality in education, we made—We paid par-

ticular attention to the kind of high school experience that the student had by way of course pattern.

We, because of our interest in that, we began to develop an expanded course grade reporting procedure for the ACT assessment. There are now—There is now a way for the individual student to report up to thirty course grade experiences as a part of the ACT Assessment Program. That pattern is very comprehensive.

For example, in the English area, it allows for the student to record the ninth, tenth, eleventh, twelfth grade English grades and a fifth grade, which could include speech or dramatics. I think it is speech and debate actually.

In the math area, it starts with algebra I, algebra II, geometry, trigonometry, calculus and computer science and so forth. I think there are seven math grades. The whole point of that—The same thing would be true in social studies and in the natural sciences area.

What we are getting at there is the ability to identify the extent to which students course pattern might indeed have some impact on achievement.

Q. My question specifically also, Dr. Anzalone, relates to whether you were aware of any written research publications prepared by your organization addressing high [3722] school course curriculum as a measure of academic achievement?

A. There is—I think in addition to some unpublished documents which I have seen, there is indeed a paper that has been prepared by Jim Maxey and other authors at ACT, comparing measures of high school performance with the ACT Assessment Program specifically.

* * * * *

Q. We were discussing a research publication by your organization addressing high school course curriculum as

a [3723] measurement of achievement. And I ask you if you can identify the document marked Board Exhibit 167.

A. Yes, I can.

Q. And is that the publication to which you referred?

A. Yes, it is.

Q. Thank you. We were also discussing, Dr. Anzalone, the bases for your opinion concerning the reasonableness of the admissions standards. Would you continue, please, sir, with those bases?

A. We had, I believe, just concluded some comments regarding the exhibit that you just introduced. When I continued to review the admissions standards and began to look at some of the exceptions, one of the first exceptions I examined has to do with the admissions standards for older students and I read here where students who are twenty-one years of age or older are exempt from the admissions standards.

Again, it is not unusual in American higher education for institutions to have somewhat different standards for the returning or adult students.

Two, the requirements related to out of state students typical for public colleges and universities. The alternate presentation of SAT results, again, is not uncommon in a state where the ACT may be the dominant or required test to permit some alternative for students coming from other states where that may not be the case and the reverse of that is [3724] typically true.

Continuing on to review the requirements for transfer students—

Q. Dr. Anzalone, could you identify for the record, please, sir, the page of Board Exhibit 183 to which you are referring?

A. I just left page seven when I mentioned comparative SAT and ACT scores and turned the page to the re-

quirements related to transfer students.

Q. And did you reach any conclusions, sir, with respect to the transfer requirement?

A. I think, again, the transfer requirements are fairly liberal, a procedure which allows students to initially enroll elsewhere to transfer into the public university system after completing only twenty-four hours of credit, essentially a year at another institution. And even there, the institution, the public university has—May exercise an exception to allow a limited number of high risk students in with as few as twelve credit hours.

I think to some extent in my judgment and my experience in the State, this is one indication of the value of Mississippi's public junior college system, which is readily available as local institutions. The public universities down through the years have had a considerable tradition of working closely with public junior colleges, in particular in the transfer situation of individual students, and I see that [3725] is a very positive aspect of the Board's admission requirements.

As we begin to look at page nine, the requirements for Delta State University, for Mississippi State, for Mississippi University for Women, for the University of Mississippi and for the University of Southern Mississippi, we begin to see the specification of admission standards for those institutions. It specifies a minimum of 15 composite score on the ACT. That 15 is slightly below the average for college-bound students in Mississippi.

It's—When we look at—Immediately then following that, the standards permit a considerable exception to that so that institutions can admit high risk students or students who have been identified as being particularly talented in some area who may have an ACT composite score as low as nine.

When that occurs, it's my understanding the institution can utilize other factors as a part of that screening process for high risk students. They might indeed look at class rank, they might look at writing samples for the students, they might look at out-of-class accomplishments of such students. There could be other factors, I understand at the discretion of the institution, that would be appropriate for the admission of high risk students.

* * * * *

[3729] I think as we look at those requirements, particularly in the broader context of American higher education, the minimum score levels required by the Board are characteristic of institutions that range all the way from an open door admissions policy through liberal to fairly traditional requirements. And I think that's quite a contrast from those institutions characterized as having selective or highly selective policies.

* * * * *

[3730] Q. Have you examined, Dr. Anzalone, these test score requirements in the context of the Mississippi population taking the test as to how the students perform?

A. Yes, I have. I used, in particular, the Mississippi high school profile report which is generated each year for Mississippi students and is provided to the Board and is provided to the State Department of Education. And when we look at the test score requirements in the context of all eight of the universities, the floor, so to speak, or the minimum eligible requirement really will encompass about ninety percent of ACT tested students in Mississippi.

Q. What test score is that?

A. That's a composite score of nine. In other words, what I'm trying to say is that the exemption procedures that are in place in the system will allow an institution to [3731] consider a student who has performed at a level of

academic—Or has a level of academic performance that would be reflected by a composite score of nine.

Q. Have you also looked at the 13?

A. I did and, in essence, that puts about seven out of every ten students into the pool.

Q. Approximately what percentage of the black students taking the test, Dr. Anzalone, score nine or above?

A. As I recall, about eighty percent of the black students score nine or above.

* * * * *

[3732] Q. Have you examined or do you have any judgment, sir, with respect to what is reflected by an ACT score of nine as it may relate to the relative reading level of a student?

* * * * *

[3733] A. There are conversion tables in the report. For example, if we're taking a nine in English and a nine in social studies and then looking that up—I'm sorry, counsel, I'm trying to do this too quickly. That would be about the ninth grade reading level.

* * * * *

[3735] Q. Dr. Anzalone, I'm showing you what has been introduced into evidence as Board 163 and ask you if you can identify for the record, please, sir, that document?

A. This is an ACT document entitled Statement of Policy on the Use of ACT Data.

* * * * *

Q. And would you read into the record, please, sir, item B(1)(C) as it appears on page five.

A. Item B(1)(C) indicates that (reading): "ACT test score data should not be used as the sole criterion for admission selection decisions. ACT encourages colleges to consider other measures of academic ability, for example, high school grades, rank in class, as well as various non-cognitive factors, interests, special skills, experiences in the admission selection decision."

Q. Now, Dr. Anzalone, have you examined the Board's standards in light of this statement?

A. I have.

[3736] Q. Have you reached any conclusion?

A. I have.

Q. What is it, please, sir?

A. In my opinion, taken in its entirety, the ACT Board standards would meet that particular requirement or that particular recommendation.

* * * * *

CROSS EXAMINATION

[3741] Q. So your understanding, Dr. Anzalone, is that those students with a particular ACT score—And what is the ACT score?

A. Nine, I think, is in the second category.

Q. A nine and a particular high school GPA?

A. At least a three point oh.

Q. Those students could be admitted to the institution and not included in the five percent exception?

A. That would be my understanding, yes.

Q. Okay. I'm going to let you keep that, Dr. Anzalone.

A. Okay.

Q. Dr. Anzalone, I'm going to show you a series of exhibits, Board 163, which you just read from during direct examination, Board Exhibit 186 and U.S. Exhibit 875. Looking now to Board Exhibit 163, which is the statement of policies of the American College Testing program. Turning now to page five of that document, Dr. Anzalone.

A. (witness complying.)

Q. What is the information, how is the information titled on page four of Board Exhibit 163?

[3742] A. There's a section beginning, Responsibilities of ACT and Guidelines for Institutions on the Use of Data Collected Through ACT Programs.

Q. And what is the purpose of the statement of policies provided by ACT, Dr. Anzalone?

A. The statement is to provide guidelines for users of the data so that they will understand the use for which the data are intended.

Q. Is–

A. The–

Q. I'm sorry. Sir, did you have something else to say?

A. No, go right ahead.

Q. Is Board 163 a statement of the policies of the American Collee Testing program regarding among other things its belief about, on page five–

A. Uh-huh.

Q. –The manner in which ACT–The manner in which the ACT assessment should be used in admission selections decisions?

A. Yes, there are–It's divided into responsibilities of ACT, which means our recommendations or decisions and guidelines for institutions.

Q. Is Board 163 or was Board 163 in effect in 1981, Dr. Anzalone?

A. Yes, the publication date of the document is June 1979.

[3743] Q. And did you review this exhibit during your deposition in November of 1981, Dr. Anzalone?

A. Yes, I did.

Q. Given the admission requirements that you jsut read for 1981-82 for the Board of Trustees, didn't the Board of Trustees admissions requirements condition admission upon performance on the ACT assessment?

A. Yes.

Q. Didn't they condition admission on performance on the ACT assessment without regard to any other measure of past academic achievement?

A. I would say yes.

Q. Looking now at page five, (b)(1)(c)–

A. Uh-huh.

Q. –Dr. Anzalone, did you read (b)(1)(c) on direct examination?

A. I believe so.

Q. (B)(1)(c) indicates that test score data should not be used as the sole criterion for admission selection decisions.

Is it your testimony today that the Board of Trustees' policy, in terms of the 1981 document that you just read, that the policy is consistent with the statement included in (b)(1)(c) on page five of the Statement of Policy?

A. The standards that we were examining in 1981 and 1982 [3744] indeed identify the ACT composite as a sole criterion for admission.

Q. Would that, Dr. Anzalone, be consistent with (b)(1)(c) in Board Exhibit 163 on page five?

A. It would be inconsistent.

Q. I show you, Dr. Anzalone, what has been marked as Board Exhibit 186. Let me close that for you, sir.

A. (Witness examining document.)

Q. Are you familiar, Dr. Anzalone, with Board Exhibit 186?

A. Yes, I am.

Q. And what is Board Exhibit 186?

A. It is an ACT issuegram addressing admissions testing and minorities, selected issues as related to the ACT assessment program.

Q. What is the date on Board Exhibit 186?

A. January, 1986.

Q. Directing your attention, Dr. Anzalone, to page six of this document which pertains to interpretation and use. Would you read the first paragraph, Dr. Anzalone?

A. (Reading): "Because many factors, for example, socio-economic status, differences in educational opportunities, culture, et cetera, can potentially affect the test performance of many students who are members of minority groups, ACT believes that assessment for the purpose of college admissions should reflect as complete a picture as [3745] possible of students and should include other information in addition to test scores. The following is a brief summary . . ." et cetera.

Q. Okay. Dr. Anzalone, is the statement contained on page sic of Board Exhibit 186 consistent with the policy statement articulated in Board Exhibit 163 or page five from which you jsut read, the (b)(1)(c)? I'm sorry, I closed your exhibit and you need it.

A. The sole criterion issue, again, counselor?

Q. Yes, Dr. Anzalone.

A. I believe that it is – That it's consistent with that, yes.

Q. Okay. Were the Board of Trustees' admissions policies from which you read in 1981 –

A. Uh-huh.

Q. – Were those admissions policies at the five institutions, Delta State University, Mississippi State University, the University of Mississippi, Mississippi University for Women – I think I've gotten all five.

A. Uh-huh.

Q. But I'm referring to that portion of the admissions standards.

A. Uh-huh.

Q. Is that consistent with what you just read from Board Exhibit 186?

[3746] A. The standards in effect in 1981-82 would not be consistent with this 1986 statement.

Q. Dr. Anzalone, you mentioned on direct testimony that part of the ACT assessment includes a student profile and I believe an ACT interest inventory?

A. Uh-huh.

Q. In the student profile information is additional information collected about a student that might enable an institution to consider factors other than test scores in the admissions selection decision-making process?

A. Yes, there are.

Q. What other kind of information is included in the student profile section of the ACT assessment?

A. Well, I think the one that's most obviously related to this would be the indication fo the extent to which the student has completed certain courses in high school in preparation for college.

Q. Would information also be included concerning the student's performance in four particular high school courses?

A. Yes, the students are asked to provide that information.

Q. Does the student also provide information in terms of their high school GPA?

A. Yes.

* * * * *

[3748] Q. Are the predictive research services of the American College Testing Program made available to all the institutions participating in the ACT assessment program?

A. The service is available.

Q. Is there an additional cost required to participate in the predictive research service?

A. There is no charge by ACT.

* * * * *

[3749] Q. Referring now to U.S. Exhibit 875, Dr. Anzalone, page four—And you have that before you—That's using the ACT on campus?

A. Yes.

Q. On page four at the bottom of the page, the first column on page four, the very last paragraph (reading): "For its part, ACT believes that all students who can succeed in college should have a fair chance of selection; therefore, ACT recommends that all students be selected with appropriate attention given to qualifications in addition to test scores."

Do you agree with that statement, included in U.S. Exhibit 875?

A. I agree with ACT's recommendation, yes.

Q. Were the admissions requirements referred to in the 1981-82 admissions policies by the Board of Trustees for the five historically white institutions consistent with that recommendation?

A. (No verbal response.)

Q. To be very direct, Dr. Anzalone, did they include references to other measures of achievement other than test scores?

A. I don't beleive so, but without checking the exhibit I don't recall what the exception policy was.

Q. The exhibit is U.S. Exhibit 744-B. You have it right there in front of you.

[3750] A. Somewhere.

Q. Take your time.

A. My resopnse is no.

Q. Dr. Anzalone, we've reviewed the availability of information other than ACT test scores—

A. Right.

Q. —In terms of the collee student report?

* * * * *

[3749] Q. Referring now to U.S. Exhibit 875, Dr. Anzalone, page four—And you have that before you—That's using the ACT on campus?

A. Yes.

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Do you agree with that statement, included in U.S. Exhibit 875?

A. I agree with ACT's recommendation, yes.

Q. Were the admissions requirements referred to in the 1981-82 admissions policies by the Board of Trustees for the five historically white institutions consistent with that recommendation?

A. (No verbal response.)

Q. To be very direct, Dr. Anzalone, did they include references to other measures of achievement other than test scores?

A. I don't believe so, but without checking the exhibit I don't recall what the exception policy was.

Q. The exhibit is U.S. Exhibit 744-B. You have it right there in front of you.

[3750] A. Somewhere.

Q. Take your time.

A. My response is no.

Q. Dr. Anzalone, we've reviewed the availability of information other than ACT test scores—

A. Right.

Q. —In terms of the college student report?

A. Right.

Q. Would you recommend that an institution with information such as that included on the college student report ignore those other sources of information and rely on test scores alone in the admissions selection decision-making process? Would that be your recommendation?

A. No, my recommendation would be that other factors be included in the totality of the admissions standards.

Q. What other factors do you refer to, Dr. Anzalone?

A. Well, I think there are at least three that are obvious in the student profile report. You have mentioned the four self-reported high school grades. I had identified earlier – You had also identified, I believe, the self – The students self-report rank in class, and I had identifieed the expanded course grade reporting section of the student profile.

Q. Dr. Anzalone, has the American College Testing Program undertaken any effort to study the accuracy of self-reported [3751] high school grades?

A. Yes, we have.

Q. And what were the results of the American College Testing Program's study regarding the accuracy of self-reported high school grades?

A. As I recall, there have been two research paths, one a bit older than the other. The incorporation of high – self-reported high school grades in the ACT process goes back a number of years and, indeed, there are ACT research documents which indicate that our studies reveal that students report those grades – I think it's about eighty or eighty-five percent of the students report them within at least one grade level. So that's been one theme of research.

In general, ACT believes that self-reported grades are useful in that process.

A more recent research approach has related to the students' self-reporting of the expanded course experience section. And in that particular research, which I believe was done in – with Illinois and Kentucky students, the accuracy of the reporting of those course grades and whether the student actually had taken those courses was even higher.

* * * * *

[3753] Research Service?

A. Counsel, I can't recall whether each was in standard or whether one or may may hbe been basic instead of standard.

Q. Did you review reports for each of the institutions?

A. I reviewed those I think that were the most recent reports.

Q. And was there a report for each of the eight institutions?

A. I believe that one was missing, but I can't cite to you which one.

Q. Dr. Anzalone, for the eight public institutions in the State of Mississippi, isn't there a strong positive correlation between self-reported high school grades and first year college grades?

A. Do you mean – You mean in general?

Q. In general.

A. There typically is a relationship. I wouldn't designate them as strong positive relationships in every case.

MS. JOHNSON-BETTS: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

(Document passed.)

MS. JOHNSON-BETTS:

Q. Dr. Anzalone, I show you what has been marked U.S. Exhibit 903. U.S. Exhibit 903, Dr. Anzalone, in-

cludes [3754] Standard Research Service reports for the University of Mississippi, University of Southern Mississippi, Mississippi State University, Jackson State University and Mississippi Valley State University for the 1985-86 freshman class.

A. Did you mention six institutions, counselor?

Q. Yes, Dr. Anzalone. We only have reports for six institutions.

A. There are six here.

Q. Is there information provided in the standard research report regarding the correlation between high school grades and first year college grades, the correlation between the four subtest scores and first year college grades and the correlation between a combined formula of test scores and high school grades and first year college grades?

A. Counselor, do you have reference to some particular section of the report?

A. I am examining now, Dr. Anzalone, I'm looking at the report for the University of Mississippi and I'm on page one zero. It's right after the index.

A. Okay. Thank you.

Q. Table H-1.

A. Thank you.

Q. Relative efficiency of indices in predicting college grades.

A. Yes, thank you.

[3755] Q. There is a reference to each of the subject areas identified for the University of Mississippi, English, mathematics, history and science, and then an overall category.

A. Right.

Q. With regard to the—We'll go straight across the column.

A. Okay.

Q. With regard to—or the row, I should say—the correlation between the four subtest scores and college, first year college grades—

A. Uh-huh.

Q. —Is there a correlation between those two indices?

A. The correlation is point four five.

Q. Is that a significant correlation?

A. I would identify it as a useable correlation. It can be used effectively in college placement decisions, for example. It should be useful to the institution, yes.

Q. Directing your attention now, Dr. Anzalone, to the next column, the H Index—

A. Uh-huh.

Q. —for high school grades. Is there a correlation there expressed for—I should say between high school grades, the four self-reported high school grades and first year college GPA?

A. Yes, there is.

[3756] Q. And what is that correlation?

A. It's point five two.

Q. Is that correlation higher than the correlation that you mentioned for test scores?

A. Yes, it's higher.

Q. And in the correlation expressed in the third category which is a combination of test scores, four subtest scores, and four high school reported grades—

A. Uh-huh.

Q. —Is that correlation stronger than either of those alone?

A. It's higher, it's point five six.

Q. Are the findings that we've reviewed in general consistent with the findings of the American College Testing Program regarding the strength of the prediction in using

ACT subtest scores and high school grades in combination versus either high school grades or test scores alone?

A. Uh-huh. Obviously, there is a variation between institutions. What you have in the lower half of that page, for example—

* * * * *

Q. —Isn't what we have observed regarding the correlation between the four self-reported high school grades—

[3757] A. All right.

Q. —and the four subtest scores—

A. Right.

Q. —and the strength of those eight factors—

A. Right.

Q. —in predicting first year college success, isn't that observation the same observartions that the American Testing Program has made, that subtest scores and high school grades together are a better predictor of first year college success than either test scores or high school grades alone?

A. Yes.

Q. Thank you. Directing your attention now, Dr. Anzalone, to another table; in U.S. 903, Table L12.5. I believe, Dr. Anzalone, that's page 409.

A. L12.5.

Q. Four point oh nine, I should say.

A. Okay.

Q. Is Table L12.5 the table that the institution could use in computing the prediction of first year college grades from the four subtest scores and the four self-reported high school grades?

A. Yes. An institution—an individual typically would use this chart for that purpose.

Q. An individual, Dr. Anzalone?

A. Right.

[3758] Q. I don't understand.

A. That's why the chart is provided, so that an individual can go through the steps identified. For example, in talking with a prospective student, let's say, they can go through the steps and, say, based upon your test scores and your high school grades, this would be your prediction.

Q. Dr. Anzalone, referring to figure one—

A. Uh-huh.

Q. —Figure one includes information that would be used in predicting or in completing that part of the formula that involves the four subtest scores on the ACT; isn't that correct?

A. That's correct.

Q. And figure two includes the information—same page, figure two.

A. Uh-huh.

Q. —includes the information that would be used in completing the formula using the four self-reported high school grades; isn't that correct?

A. That's correct.

Q. And the third step in this process would involve a combination of the results obtained in step one, using the four subtest scores, and the results obtained in step two, using the high school, four self-reported high school grades and averaging the results of both of those?

[3759] A. That's correct.

Q. For example, Dr. Anzalone, could we look at and—And we are referring to the University of Mississippi.

A. Uh-huh.

Q. Could we look at an ACT score of 12 in each of the subtest areas under figure number one and complete the appropriate statistical calculations included in step one?

And if you would like a piece of paper or something to take notes on. . . Do you have some? Do you need a pen or pencil?

A. I can use it right here.

A. Okay.

A. Okay. You would like me to move through the steps?

Q. Just working through step one now.

A. Okay.

Q. Using an ACT of 12 in each of the four subtest areas. We're using a hypothetical –

A. All right. We would then use the column on the left of figure one at twelve, we would move to the right and we would write down the figure nine. We would move to the right and write down the figure three. We would move to the right and write down the figure minus one. We would add those together and that would be an eleven, I believe. We would then add the ACT constant of seven to that, I believe, and that would be eighteen. We would then mark off one decimal position.

[3760] Q. Thank you, Dr. Anzalone. So at the end of step one we have a one point eight.

A. Correct.

Q. Correct. Now, referring to figure number two, step two in this process. We look at high school grades. Looking at a B average, a B in each of the four subtest areas –

A. Uh-huh.

Q. – What would the GPA predicted under step two be?

A. Under step two we would write down a four, a seven, a five and a five and that would give us twenty-one, and we would add the constant of four to that, which would be twenty-five. You would mark off one place, and that would give us two point five.

Q. What does step three require us to do now, Dr. Anzalone?

A. Step three requires us to average the two predictions so we would add two point five to the previous one point eight, and in doing so, we would get four point three. We would then average those two predications by dividing by two and, in essence, we would get a two point one.

Q. That's two point one college GPA for the first year?

A. (Witness nods head up and down.)

Q. Dr. Anzalone, could we just take one other step using the same document and we'll use our same information from step two and modify step one to look at an ACT of eleven in each of the four subtest areas.

[3761] A. Okay.

Q. Okay.

A. Would you like me to do that computation?

Q. Yes, sir, I would.

A. (Witness complying.) We would use the figure eight, three, zero and minus one, which would be ten. We would add the seven. That would be seventeen. And we would mark off one place, one point seven.

Q. Now, combining step one, the one point seven, with our previous step two, using a B in each of the high school subject areas, which is a two point five –

A. Uh-huh.

Q. – What would the results of step three indicate?

A. It would be a two point one.

Q. A two point one, Dr. Anzalone?

A. Uh-huh.

Q. I just didn't hear you, that's all.

A. Yes, a two point one.

Q. Thank you. Looking now at the Standard Research Service report for the Unviersity of Southern Mississippi,

Dr. Anzalone, I believe it's second in that stack of documents.

A. Yes, it is.

Q. Referring to table L12.5, which is the same table—

A. Uh-huh.

[3762] Q. —to which we previously referred in the Standard Research Report for the University of Mississippi.

A. Right.

Q. Looking—Dr. Anzalone, just following through the same process as predicting first year college GPA using a 12 subtest score in each of the four subtest areas, what would your results for step one be?

A. Five, three, one and zero would be nine for step one.

Q. Is there another step to step one? Is there an ACT constant?

A. Oh, I beg your pardon. An ACT constant of ten. So we're at one point nine.

Q. Utilizing the B in each of the four subject areas, high school subject areas, what would the results for step two be?

A. We would use six and five and three and two would be eighteen. We would add the constant of nine which would be twenty-five. Mark off one. We would add the two steps together, divide by two and the predicted GPA would be two point two.

Q. Two point two. Thank you, Dr. Anzalone.

* * * * *

[3763] Research Service?

A. That is true.

Q. Dr. Anzaloine, I believe you identified a similar document on direct examination, Board Exhibit 275, the IHL-18s. I show you what has been marked U.S. Exhibit

854 for the University of Mississippi. Is that an IHL-18 report for the University of MIssissippi?

A. Yes, it is.

Q. Is that the kind of document to which you referred in your response to counsel regarding your review of information provided by the Board of Trustees regarding their data showing—

A. Yes, it is.

Q. —Comparisons between the ACT composite score and the performance of students after the first year of college enrollment at those institutions? And your answer, Dr. Anzalone, I believe was yes, is it?

A. Yes.

Q. Do you know, in general, Dr. Anzalone, the purpose of this report?

A. The purpose of this report is to identify in tabular format scatter plot information regarding the ACT composite score and whether the student, the entering student, with that score achieved above or below a two point oh during the freshman year.

* * * * *

[3769] Q. The difference between the mean score in terms of high school grades—

A. Uh-huh.

Q. —and the black and white sub-group—

A. Uh-huh.

Q. —is less than the difference between the mean composite score of the black and white students and the two sub-groups, wouldn't you say generally?

A. I would say for these students who entered college in the fall of 1984, yes, there appeared to be—there appeared to be more of a difference in the test score performance than in high school grade performance.

Q. Okay, Dr. Anzalone, I hand you U.S. Exhibit 897, U.S. Exhibit 899, U.S. Exhibit 894-I and U.S. Exhibit 894-J. Referring now, Dr. Anzalone, to U.S. Exhibit 894-I and -J.

* * * * *

[3776] Q. In making the observations that you made today, Dr. Anzelone, regarding the impact of the Board's policies on the pool of students eligible for admission to the Institutions of Higher Learning, you didn't examine the impact of the changes in the minimum ACT composite scores at Institutions of Higher Learning with respect to the overall pattern of scores between black and white graduates in the State of Mississippi, did you?

A. No, I did not.

Q. Dr. Anzalone, in 1973, when the American College Testing Programs technical manual was published, weren't the findings at that time regarding the predictive relationship between high school grades and first year college grades and ACT test scores and college grades, weren't the findings that high school grades were slightly better predictor of first year college grades than ACT scores?

A. I believe that the technical manual indicates that the high school average had a slightly higher correlation with freshman GPA than did the four ACT test scores, yes.

Q. In later research—and I'm referring now to the 1981research bulletin which was made an exhibit to your deposition in January of 1982—you had indicated at that time that ACT, recent research in 1981 indicated that test [3777] test scores had become about as good a predictor of first year college grades as high school grades—

A. Yes.

Q. —but that both test scores and high school grades were still a better predictor of either of those two indices alone; is that correct?

A. Yes.

Q. Is that still the position of the American College Testing Program?

A. I think our latest data reflects that, yes.

* * * * *

[3781] Q. —wouldn't it be easier for black students to gain admission to the historically black institutions with lower ACT composite score requirements—

A. Uh-huh.

Q. —Than to the traditionally white institutions with higher ACT composite score requirements?

A. As it would be for white students, yes.

Q. Are black students represented in greater numbers in the group of students scoring less than 15 on the ACT?

A. I believe so, yes.

Q. And wouldn't the lower scores of the traditionally black institutions continue the over-representation of black students at the traditionally black institutions given their patterns of scores on the ACT?

A. It would in the absence of any increase of admission standards.

Q. To what do you refer, Dr. Anzalone, in terms of the increase in admissions standards?

A. Well, preparation is a critical factor of readiness for college, and at least one indication of readiness for college is performance on an ACT assessment program. That's—

Q. Are you referring to the high school course requirement?

A. Right.

[3782] Q. Okay.

A. So, again, preparation is clearly a factor in achievement. I think we looked at some data earlier today regarding the performance of black students on the ACT assess-

ment in Mississippi who had completed a college preparation or the core program as contrasted to those who had not.

Q. The high school course requirements were implemented in 1986, is that true, Dr. Anzalone?

A. That's true.

Q. And during the interim years between the 1981 admission standards and the 1986 admission standards–

A. Uh-huh.

Q. –the effect that we just described of more black students being able to gain admission to the traditionally black institutions than would be able to gain admission to the traditionally white institutions would have continued; is that correct?

A. True.

Q. Dr. Anzalone, regarding your observation about the substantial flexibility–I believe you characterized it as substantial flexibility–in the admissions requirements established by the Board of Trustees–

A. Uh-huh.

Q. –permitting admission of students from a nine to [3783] fourteen on the ACT score to the Institutions of Higher Learning–

A. Uh-huh.

Q. –the five historically white Institutions of Higher Learning–

A. Uh-huh.

Q. –have you undertaken any effort to examine the number of students, the total number of students that would actually be able to gain admission under the high risk exception for those institutions in any one year?

A. I examined that issue, and if I'm not mistaken, I believe I came out with the figure of somewhere around five hundred based upon percentages of freshman enrollment or the fifty which would be used by institutions.

Q. Would that include all institutions or the traditionally white institutions only?

A. I believe I made that calculation for the traditionally white institutions only.

Q. So that five hundred students, approximately five hundred students, could be admitted to the five historically white institutions with ACT scores of nine to fourteen?

A. Uh-huh.

Q. If individual institutions, Dr. Anzalone, discontinued their practice of admitting students with a nine to fourteen on the ACT, or if they limited their enrollment of students, [3784] say, from twelve to fourteen–

A. Uh-huh.

Q. –only–

A. Uh-huh.

Q. –would that affect your opinion regarding the substantialness of the flexibility regarding the high risk exception?

A. I think I would have to look at the extent to which the students falling in that score range that you identified actually applied for admission to those institutions. I think that would be a serious consideration.

In other words, the option is there, the opportunity is there; I don't know how many of them would take advantage of that.

Q. But given your observations that five hundred student–

A. Uh-huh.

Q. –could be admitted under the–

A. Uh-huh.

Q. –the high risk exception, if individual institutions limited that, it would reduce the number from five hundred to something less than five hundred?

A. If they did, sure.

Q. Are you aware of any institution that has done so; either discontinued its policy of admitting students with less than a 15 on the ACT?

[3785] A. I'm not aware of it, no.

Q. In your preparation for testifying today were you informed that Mississippi University for Women has discontinued the policy of admitting students with less than 15 on the ACT since 1982?

Q. Were you informed of that?

A. I don't recall if I knew that, no.

* * * * *

Q. Would you still, Dr. Anzalone, expect an institution to articulate in its catalog or its admissions materials [3786] notice of their policy to admit high risk students if the institution is prepared to do so under the Board of Trustees' admissions policies?

A. I think that would be appropriate, yes.

Q. Okay. Thank you. Are you aware of any institutions in the State of Mississippi that do not include the high risk admissions policy in their high school catalog, in high school materials?

A. I believe my last review of university catalogs, each included the Board of Trustees' admissions policies, but I have not checked since the more recent policies were promulgated, if that is, indeed, the case.

A. Are you referring to the regular admissions policy at the time you reviewed it or are you referring to the high risk exception?

A. As I recall, and it's been some time since I actually reviewed the catalogs of the institutions, but the institutions catalog practice has been to—at least at one point in time, was to actually duplicate the Board's policy statements in the admissions section of the catalog.

Q. And this was the practice at one point in time?

A. I believe I can say that with some certainty, yes.

Q. Dr. Anzalone, I show you what has been identified as U.S. Exhibit 053.

A. (Witness examining document.)

[3787] Q. Dr. Anzalone—

A. Yes, ma'am.

Q. —U.S. 053 is an agenda for the meeting of the instruction administration and policy committee of the Board of Trustees dated February 1, 1979. The agenda indicates there was a presentation and discussion by Dr. Sam Anzalone, the regional director of ACT Educational Services. Did you meet with the instruction administration policy committee of the Board of Trustees staff in 1979?

A. I did.

* * * * *

Q. The agenda indicates there were several topics of discussion at the meeting: the desired results of student testing, the extent that testing programs can predict success of college freshmen, what various measures of achievement would be best for minimum admission standards, historical data of enrollees in Mississippi universities and the test performance level of the major feeder high schools.

Other items include an analysis of the ACT scores of [3788] freshmen, a review of the remedial programs, a discussion of the correlation among ACT scores, high school grade point average and rank in class, a review of the statistics identifying graduates admitted with an ACT score less than twelve and a review of the achievement of the graduates of the Schools of Education in the NTE examination.

I refer only to those portions that have to do with the ACT assessment.

A. Uh-huh.

Q. In responding to questions about the best way to predict college success, you indicated to that committee, didn't you, that the use of the—of a single cut-off score did not take into account high school average and other considerations that might very well be appropriate, and that was certainly not the American College Testing Program's recommendation, that a test score alone be used; is that correct?

A. That's correct.

Q. Were you aware at this meeting that some Institutions of Higher Learning in the State of Mississippi were already employing an ACT socre of fifteen as the minimum requirement for admission to those institutions?

A. Yes, I was.

* * * * *

[3791] Q. Particularly in the historically white institutions there wouldn't be positions for each of the black students who scored from nineteen—or nine to fourteen, would there?

A. No, I guess there would not be, assuming they applied.

Q. Okay. And whether they applied might depend on how well catalogs and brochures informed then that there was—there were positions for which they could apply; is that right?

A. And recruiting efforts, yes.

Q. Yes to my comment about catalogs and brochures?

A. Yes.

Q. I'm showing you Board Exhibit 190 concerning the relationship of ACT scores and Nelson Denny reading scores.

A. Yes.

Q. You refer to a—you refer to ACT subtest scores of nine in English and social studies as being equivalent to about a ninth grade reading level?

A. I believe so.

Q. If you look at page five and about in the middle of the page where it describes the steps, where it says number two, it says to specify sixty-eight percent confidence [3792] interval—

A. Uh-huh.

Q. —for the predicted raw scores add and subtract fifteen points from the predicted form C raw score?

A. Yes.

Q. Now, if we go to the table which you used, which I think was table six?

A. Uh-huh.

Q. So the scores of nine and nine were equivalent to a raw score of forty-three?

A. Yes.

Q. So to take an account of the standard error, you have to add and subtact fifteen to forty-three; is that correct?

A. Correct.

Q. So then when you go to page nine, I think you used table eight?

A. Uh-huh.

Q. So at the top of the range raw score fifty-eight is equivalent to a twelfth grade reading level?

A. Yes.

Q. And subtracting the fifteen from the forty-three is off the table; is that right?

A. Uh-huh.

Q. Is that right?

A. Yes.

[3793] Q. But the way this publication—this publiction indicates that the way it should be done is to take an account of the standard error; is that right?

A. Well, again, it's provided so that individuals can estimate class reading levels from the ACT assessment program sub-tests.

Q. But the way it describes the procedure for doing that you should take account of the standard error and go fifteen points above and below the raw score, the way I just did it, isn't that right?

A. To indicate that the student's reading level would be somewhere in that range, yes.

* * * * *

[3796] Q. This statement indicates that people were rejected because they had a score below the minimum; is that right?

A. Right. So they are denying students below nine.

Q. Based on the test score?

A. Based on the test score.

Q. And that's inconsistent with those policies to which Mrs. Johnson-Betts referred, isn't it?

A. I think it—yes, in a narrow sense, I would agree with that, yes.

Q. Okay. With—and with respect to Plaintiff's 300-H, the fourth page—

A. Three hundred—.

Q. H, the other one, the fourth page.

A. Yes, okay. Okay.

Q. The University of Southern Mississippi?

A. Uh-huh.

Q. That indicates a hundred and sixty-six applicants rejected because ACT-SAT score below minimum?

A. That's what it indicates.

Q. And the conduct which that represents also would be inconsistent with those policies?

A. I think my response would be the same as to the previous question, yes.

[3797] Q. What would be your response?

A. I think in a narrow—in a narrow sense, that would be true. Again, I don't know how they counted to get the one sixty-six. I don't know if they are counting students totally outside—applicants who are totally outside of their exceptions policy or not.

Q. I believe you testified that under the current Board policy even if a student meets the core requirement, the student can be denied admision based on being below the minimum test score?

A. I'm sorry, counselor, would you repeat your question?

Q. I want you to assume a student who meets the core course requirements—

A. Okay.

Q. —but has an ACT test score below the minimum for the particular institution for which the student applies.

A. Uh-huh.

Q. The Board policies allow the institution to reject the student based on the test score; is that right?

A. Right.

Q. Based on the test score alone?

A. Based on the test score alone.

Q. Isn't that, again, also inconsistent with the ACT policies to which Mrs. Johnson-Betts referred?

A. Well, I think what's important there is to note that [3798] the student's admission was considered in the context of the pre-college curriculum and the test score.

Q. The student could have gotten fine grades on the pre—on all the courses for the pre-college course requirements?

A. Correct.

Q. And then be rejected because of the test score; is that right?

A. That's correct.
Q. And that's inconsistent with the policies, isn't it?
A. I would agree with that inconsistency, yes.

* * * * *

[3799] Q. —in determining how well a prediction is being done, doesn't ACT recommend that universities make separate studies regarding different racial groups?

A. Yes, that that should be examined.

Q. And, again, ACT will help a university do that without [3800] cost; isn't that correct?

A. That's correct.

Q. And isn't it the case that Mississippi universities haven't undertaken that type of study?

A. I'm not aware that there has been any in recent years through the ACT Research Services.

Q. And you've reviewed the materials, haven't you?

A. I reviewed the materials, yes. I believe, Counsel, in preparation for my 1981, 1982 depositions, I believe at that time there had been an example of such sub-group analysis, but I would really have to check.

Q. Would it be consistent with your views, Dr. Anzalone, to testify on the one hand that the Board's use of the ACT assessment is educationally reasonable, and on the other, that it's not consistent with ACT policies on the use of the ACT assessment program?

A. I think that taken in the totality of the standards, the standards are reasonable. I admit that some of the wording related to ACT recommendation or policies may be a bit inconsistent with the procedure that the Board is using.

Q. And the ACT recommendations, you agreed, are designed to promote fairness in selection and accuracy in selection?

A. Oh, yes.

* * * * *

[3803] Q. You referred— did you refer to a study in which ACT participated that looked at the issue of how many schools in the country did use cut-off scores? You referred to some date from 1980 to more recent times?

A. I didn't use it in the context of cut-off scores. There has been a fairly recent national survey on admissions practices in American colleges and universities. It was a cooperative project of ACRO and ACT and the College Board and I believe the American Council on Education and perhaps one or two other organizations.

And, in essence, that is—at the present time—at the present time, that represents probably the best indication of what is occurring on campuses by way of changes in admissions requirements or patterns, yes.

Q. Isn't it a fact that it indicates that approximately two-thirds of public and private universities do not have a minimum cut-off score on the ACT or SAT?

[3804] A. I would have to—I don't recall that from memory.

Q. Okay. Are you referring to—is it titled Demographic Standards and Equity Challenges in College Admissions?

A. Yes.

Q. On page twenty-eight, I'm going to give it to you—

A. Uh-huh.

Q. —does the sentence appear: About one in three institutions has a minimum test score requirement, from which I drew the converse and said two-thirds don't?

A. About one in three such institutions has a minimum test score requirement.

Q. So the converse would be that two-thirds don't?

A. Correct. Among colleges using the ACT assessment, there does appear to be an increase in minimum

standards on the ACT composite score for public colleges. At least for those using them.

Q. All right. But still what it says there is that about one-thrid have a minimum score?

A. Uh-huh.

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[3806] Q. In terms of the Georgia system – in discussing with the Georgia system adding the ACT as an alternative, was your [3807] role to try to convince them to use the ACT?

A. Yes.

Q. Is that generally one of your roles; to try to convince people to use the ACT?

A. (Witness nods head up and down.)

Q. And the different tools that ACT provides?

A. Yes.

Q. I understood you, in responding to a question from Mrs. Johnson-Betts regarding the correlation between self-reported high school grades and first year college grades, to say that the correlation is, quote, "not strong in every case." Do you recall characterizing it that way?

A. I don't recall exactly what my response was. I indicated that I would not characterize it in the language that she used.

Q. For example, if one of the correlations for the University of Mississippi between the four subtest scores and grade point average was point forty-five –

A. Uh-huh.

Q. – would that be one where you wouldn't call that particularly strong?

A. Generally, correlations between about four point oh and about point seven oh are very useable for college and university work.

When you look at all of the correlation studies, all [3808] the validity studies that have been done, typically anything around point five oh would be common, and so point four five is a little below point five oh and so I said that it is not as strong as five oh.

As you move on up to point five oh and to point six seven or whatever, obviously the relationship gets stronger between the predictor variable and the criteria.

Q. Okay. If one is trying to understand or explain differences between grade point averages that a group of students obtained –

A. Okay.

Q. – and one looks to information that's available on their grade point average –

A. In high school or college?

Q. In high school.

A. In high school? Okay.

Q. – And then we learn there's a point four five correlation, in terms of figuring out how much is the difference between the students in this group that this explained don't we square the point four five and then learn that it explained about, well, something under twenty-five percent of the variance? Isn't that the way you do that?

A. When you square the simple order correlation into the so-called capital R correlation, as you just did, and you [3809] suggested it would be point two two or point two three, what that explains is the variance in the criteria. The variance in the criteria are made up by the variance in the predictor variable of high school averages, you got a lot of high school averages in that predictor variable and you've got a lot of freshmen GPAs in the criterion, so the squared R identifies the extent to which the variance in the criterion I believe is caused by the variance in the

predictor variable. I'm not a psychoatrician, but that's my understanding of that concept.

Q. Well, doesn't that, in effect, tell us that we need to look to a lot of other factors just besides that one of self-reported grades to figure out why the students had different college grades? Isn't that what that means, in effect?

A. Again, I think, you know, looking at predictor variables, be they some indication of high school performance, be they the courses taken, we've got research that indicates that both certainly contribute, we also need to look at other conditions, perhaps, that may be affecting the correlation.

Q. Isn't the bottom line that this is one of the reasons why ACT recommends that you don't just—

A. Uh-huh.

Q. —use one test score because even with correlations [3810] up to—well, between point four and point seven, there's a lot of other factors explaining differences in college grades.

A. There are other factors, that's correct.

Q. So that's—isn't that part of the reason that ACT recommends that you look at other factors?

A. Well, certainly if you're looking essentially at predictor—at prediction validity, that would be true, yes.

[3824] * * * * *

TESTIMONY OF THOMAS BORDEAUX.

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DIRECT EXAMINATION

MR. GOODMAN:

Q. Where do you live, please, sir?

A. Meridian, Mississippi.

Q. What is your educational background?

A. I have a bachelor's of Arts Degree from the University of [3825] Mississippi and a LLB degree from the University of Mississippi.

* * * * *

Q. Do you hold any official position in state government?

A. I am a member of the Board of Trustees of State Institutions of Higher Learning.

Q. When were you appointed to the Board?

A. In 1980.

Q. By whom?

A. By Governor William Winter.

* * * * *

[3827] Q. When you went on the Board, what was the racial composition of the membership?

A. We have a thirteen person Board, twelve of whom are regular members and the thirteenth member is a LaBove Trustee that votes on matters only affecting the University of Mississippi. Of those thirteen persons, there were ten white and three black of the regular Board, sort of speaking, of twelve persons. We have twelve-year appointments. Again, three black and nine white.

Q. At the present time, what is the racial composition of the Board?

A. The same.

Q. How are officers of the Board selected?

A. They are selected by vote of membership of the Board.

Q. During your tenure on the Board, what office or positions, if any, have been held by black Board members?

A. Dr. Robert Harrison, who is a dentist from Yazoo City, has served as both a Vice-President and President of

the Board. He was the first black Board member ever to serve. He was appointed by Governor Waller.

Ms. Betty Williams, elementary school principal from Columbus, a black lady, and she has served as Vice-President of the Board and took office as President on the 8th of May.

[3828] Q. So she is currently President?

A. Yes.

Q. During your tenure, what committee positions, if any, have been held by black Board members?

A. Well, they have served on various committees just like everybody else.

Dr. Harrison, I recall, was Chairman of the Policy Committee; Mr. Watson, George Watson from Pass Christian and was black, served last year as Chairman of the Building Committee.

They have served on all committees. There has been no distinction.

Q. What about Mr. Rushing?

A. Mr. Rushing is a banker from Gulfport and he was recently appointed and served as Chairman of the Finance Committee of the Board.

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[3830] Q. From your experience, observation and participation, to what extent has racial identifiability of institutions been a factor in Board actions?

A. Well, necessarily the Board is aware that we have got three institutions that have been predominantly black institutions and five that have been predominantly white institutions.

In the six years I have been on the Board—seven years that I have been on the Board, I have not seen any single action taken by the Board that had a negative or adverse effect on a black institutions that was taken, because it

was a black institution. We have—the Board has had and had

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[3831] There have been occasions when we have allocated funds to the regional institutions contrary to what would have been done if—If a formula were applied, and since two of those regional institutions are for blacks, I guess what was done, although it was not done as a racial undertaking to but try to help the regionals, whether they were white or black.

We have encouraged the employment of white faculty members at black institutions, we have encouraged the employment of black faculty members at white institutions. We have tried to encourage the recruitment of white students at black institutions and vice-versa.

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CROSS EXAMINATION

[3853] Q. Mr. Bordeaux, what was the subject matter of your baccalaureate degree, your major?

A. History.

Q. History?

A. Yes.

Q. In terms of your—You said you had a civil law practice. What kinds of cases or matters do you work on?

A. Most everything that walks in the door.

Q. Could you give me some examples?

A. Well, yes, sir. We handle civil litigation, we do corporate work, we do domestic relations work, we do estate work.

We don't do any tax work, don't know how. I don't have much opportunity to do criminal work.

Q. Did you have retain agreements with any bodies of the Government? Do you have any retainer agreements like with a [3854] School Board?

A. Yes, right. One of my partners represents the Local Housing Authority.

Q. How about you personally?

A. No, no. We used to – I used to be the City Attorney for the City of Meridian, but it got to be that we ran into too many conflicts, so we quit.

Q. Prior to your employment with the Board, have you been involved in politics in the State?

A. As a candidate, no.

Q. In terms of working with candidates?

A. Sure. I try to do what I consider is a good citizen, be active in the political process.

Q. Were you active in Governor Winter's election?

A. Yes. He is a fellow that I had a great deal of respect and admiration for, and I was a consistent supporter of his.

Q. Were you involved in his campaign?

A. Every one of them.

Q. Including when he was elected as Governor?

A. Yes, sir.

Q. If I asked you what qualifications you felt you had to be appointed to the Board of Trustees at the time Governor Winter appointed you, what would you say?

A. Well, I would start off by telling you that I come from a family of people who have a high regard for education. My [3855] granddaddy had ten children and he saw to it that every one of them got a college education.

My father was a school teacher. I had an aunt that was a school teacher. I have always been interested in education. I used to serve as Chairman of the Education Committee with the local Chamber of Commerce. I tried to be supportive of it.

As far as any formal professional training as an educator, as I have already indicated, I had none whatsoever.

Q. Isn't it a fact that in 1972, Governor Waller appointed four white persons and one black person to the Board of Trustees?

A. Yes, sir.

Q. And in 1976, Governor Finch appointed four white persons and one black person to the Board of Trustees?

A. Yes, sir.

Q. And in 1984, Governor Allain appointed four white persons and one black person to the Board of Trusteess?

A. Correct.

Q. Do you regard that as a coincidence?

A. I never thought about it. Coincidence in what way? I really don't understand your question.

Q. A coincidence that four Governors four years apart each appointed four white persons and one black to the Board of Trustees?

A. I wouldn't call it a coincidence. I would just call it [3856] a fact.

Q. Well, do you have some explanation for it, other than maybe it is the custom or the practice of appointing on the basis of race, four white persons and one black person?

A. I stopped trying a long time ago to figure out what went through a Governor's mind.

Q. Do you think in terms of qualifications that more than one black person could have been appointed each time?

A. Well, I have never considered the matter.

Q. Has each governor had an opportunity to appoint the LaBove Trustee?

A. Yes.

Q. And was each person appointed to that position white?

A. Yes.

* * * * *

[3857] Q. Are there Board members who had prior involvement in the area of higher education?

A. Presently present serving on the Board?

Q. Yes.

A. William Jones from Jackson used to be associated with the University of Mississippi, so I—He has had some prior involvement in higher education.

Q. In what kind of position?

A. I am not sure. I think he ran the continuing education—May have a different name, but he was one who arranged to have short courses and seminars and all of that sort of business. He may have taught some too. I am not sure of that.

Incidentally, I—I forgot to mention that I used to teach history at the University of Mississippi when I was in law school. I taught two courses in American history. I [3858] don't know what that qualifies me to do, but for the purpose of the record, I thought I would mention that. I had forgotten that.

Q. Did you—Can you think of any other Board member who had prior involvement in higher education?

A. It is not a subject that I have inquired into, but I cannot think of any.

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[3862] **TESTIMONY OF RICHARD DOBER.**

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DIRECT EXAMINATION

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Q. Mr. Dober, where do you live?

A. I live in Cambridge, Massachusetts.

Q. Would you please describe to the Court your educational background?

[3863] A. I graduated from Tredyffrin-Easttown High School in Berwyn, Pennsylvania, attended college in New York City and received a B.A. in design and took my graduate work at Harvard University.

Q. All right. And what degrees did you receive?

A. A master's in planning.

Q. Do you have any professional affiliations or appointments?

A. Yes. I am an active member of a number of professional organizations. I am a member of the American Institute of Planners. I was a founding member of the Society of College and University Planners. I am a member of the American Renaissance Association. I am a reviewer for the National Science Foundation. I was an active member of the National Educational Research Information Clearing House.

* * * * *

Q. Have you had any special appointments or awards that you consider important?

A. Some, yes. I was a sheltered fellow at Harvard University.

I received a national endowment of the arts grant to study college and university architecture.

Q. Mr. Dober, have you had any academic appointments or lecture experiences?

A. Yes. I have been a visiting critic in design at the Harvard Graduate School of Design.

[3864] I have been a senior lecturer at Massachusetts Institute of Technology.

I have been a member of several research groups at those institutions.

I have held short-term appointments in teaching campus planning, both in the United States and abroad, and I often lecture on college and facility planning.

Q. Is it possible for you to estimate how many such lectures you have given?

A. As my wife says, I do a lot of talking, and I would guess several hundred over the last thirty years.

Q. Mr. Dober, what is a sponsored study tour?

A. My resume lists sponsored study tours. These are activities in which the foundation or client or Government will sponsor my visits to certain facilities or campuses for the purpose of learning about them, making evaluations and using that information in my work.

Q. Could you describe just a few of those sponsored study tours, and who sponsored them and their purposes?

A. They vary from year to year, according to my practice. One that comes to mind was a visit to Great Britain at the time of when the new universities were being planned, and I was asked by a foundation to examine what was going on there and to see whether there was any experience or ideas that could be applied usefully in the United States. That resulted [3865] a small book on the subject.

Q. You mentioned a book. Have you otherwise written in the field of campus and facility planning?

A. Yes. In 1962, I published a book called *Campus Planning*, which is, I think, still considered to be the authoritative work in that field.

I have published several other books on planning and design. I have been the editor of over fifty books on planning and design. I have written a number of articles in the field, and the most recent will be published this fall. It is in the *Encyclopedia of American Architecture*, and it is a substantial review of campus planning in the United States.

Q. Mr. Dober, what is your current professional occupation?

A. I am a campus planning and facility consultant.

Q. And how long have you been doing that?

A. Almost thirty years.

Q. Could you describe briefly what sort of activity that profession entails to the Court?

A. It is changed as higher education has changed over the years. The core of the activity is to advise colleges and universities on aspects of growth and facilities, campus planning, building planning and so forth.

Q. Does it include analysis of existing facilities?

A. It does, yes.

Q. How many colleges and universities have you so advised?

[3866] A. About three hundred.

Q. Now, is your work as a consultant generally restricted to a particular region of the United States?

A. No, my work has taken me through most of the states and overseas, as well.

Q. What sort of activities have you had overseas?

A. We have served UNESCO and the World Bank in planning facilities for developing countries, as well as mature countries.

We have created campus plans in about twelve nations overseas.

We have participated in international conferences on campus planning and facility planning.

Q. Could you briefly describe your recent work in China to the Court?

A. Yes. We were asked by the People's Republic of China, which is now in the process of westernizing higher education to advise them on campus planning and facility plar ning using American models.

Q. Has your practice been largely in the private or the public sector of higher education?

A. In terms of percentage of clients, it has been private, but I would say sixty/forty private to public.

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[3867] MR. RAY: Your Honor, we tender Mr. Dober as an expert in the analysis of higher education facilities.

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[3868] THE COURT: Very well. He will be accepted in that role.

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Q. Mr. Dober, when did you first become involved in analysis of the public higher education system of Mississippi?

A. In 1979, the Academy for educational Development and Arthur Anderson were engaged to do a study by the State legislature of all aspects of higher education as it relates to public policy.

Since we had worked with AED over the years, they asked us to review the facility portion of that study, which we did.

Q. Were you aware of this lawsuit at that time?

A. I was not.

Q. Have you had further involvement in the State of Mississippi after the AED study?

A. Yes.

Q. And what did that involvement entail?

A. I worked there—My work there involved the preparation of a report published in 1981 called the Capital Improvements Study.

Q. And were you aware of this lawsuit at the time that you did this report or work?

A. I was not.

* * * * *

Q. Yes, sir. And how much time was spent developing this study?

[3877] A. Approximately eight months.

Q. And when was it presented to the Board of Trustees?

A. Our first view of this was in December of 1980, the full report in draft form in May of 1981 and a concluding presentation of the report in August of 1981.

Q. And when were you first contacted with reference to this lawsuit?

A. The day we made our final presentation to the Board in August of 1981.

Q. What were you asked to do, what assignment were you given?

A. We were asked to stand behind the facts that are in this report and to apply them to a key question, namely in looking at the information, is there any relationship between the distribution of space and the racial characteristics of the institutions.

Q. And what methods did you use to undertake that assignment?

A. We prepared an evaluation of analysis report for the Board's use which involved gathering data from the 1981 report, arranging those in tabular form and also looking at certain other key questions in making our evaluation.

Q. And I believe you said you were looking to see whether there was a relationship between distribution of space and the racial identity of institutions.

A. Uh-huh.

Q. What did you look for to find if there was a relationship?

[3878] A. What we do was to take the data base, the information in this report and organize it into a series of

summary tables and graphs called the IHL space comparisons.

Q. Is that a document marked as Exhibit Board 304, please, sir?

A. It is, yes.

* * * * *

A. We then tabulated what I believe to be, in my opinion, in my judgment the key factors which is square footage per FTE per institution by the HEGIS categories, and this is summarized in this report. We then rank ordered the institutions. By that I mean in descending order of space, and looked at the data, and—

Q. And did you also include the criterion you mentioned on the condition of the facilities at the institutions?

A. Yes.

* * * * *

[3881] Q. Look at page eight, if you would, Mr. Dober. Please describe what that table involves and why you included it, whether there were any conclusions you drew from that table.

A. This comes down to the core, the core of the core, if I could use that expression. The net assignable square feet for all non-residential purposes. I think given three thousand one hundred and twelve colleges and universities in the United States, we will see fluctuating patterns in residential space depending upon a whole series of variables that don't organize themselves into a rational pattern.

If we look at college and university space, however, non-residential, then the kinds of space available and the size tends to have a universal characteristic to it.

In other words, most places will have a certain amount of space of a certain kind to carry out their educational

missions, irrespective of the private or public sector, irrespective of region and so forth.

Q. Okay. Did you reach any conclusion with respect to the information on page eight?

A. Yes.

Q. What does that include?

A. That in terms of net assignable square feet, Jackson State University is at the bottom of the list and Mississippi University for Women is at the top of the list.

Q. Are there any conclusions related to the racial identity [3882] overall?

A. The rest are interspersed in a pattern that's irregular and would not suggest to me a relationship to the racial composition.

* * * * *

[3888] Q. Now that we have looked at the distribution of space as you arranged it, do you have an overall conclusion with respect to the distribution and amount of space in the state public institutions of higher learning when this study was done?

A. Yes.

Q. And what's that conclusion?

A. That—in terms of the institutions in the State of Mississippi?

Q. Yes.

A. There is no relationship between the distribution of space in the aggregate and by function that would suggest a profile of racial characteristics and its association with the distribution of space.

* * * * *

[3889] Q. What does this table describe?

A. We had to find some way to give—produce an index on condition given the amount of data available to us

and it was my judgment that by taking the number of citations of subsystems that were in poor or worse condition and organizing that information by sub-systems, we could get a useful profile of the condition of buildings at each institution, and then we could summarize that information by dividing the number of such elements by the number of buildings and getting a spread of condition index that I thought was fairly reliable.

Q. And what does that index represent?

A. It represents the relative degree of R and R requirements at each of the institutions.

Q. Did you describe what category four and five were?

A. Yes, that's described in the report. It's on page – the second page in from the appendix which would follow page seven – eight.

Q. Okay. And what is a brief description of category four and five?

A. Category four are those buildings which are in poor to fair appearance. They have functional problems. There are significant code violations. They need immediate attention. They could be reused after major repair, renovations or reconstruction of buildings and/or sub-systems.

[3890] Q. And five?

A. Five are buildings that are so poor they are practically unusable. Major code violations. Some of the systems were inoperable or dangerous. The building should be close to being condemned or abandoned. I added one phrase which I thought was redundant: It needs immediate attention.

Q. And did you find such conditions on each campus within the state?

A. Yes, I did.

Q. When you summarized these conditions on page twenty-seven, what was your analysis? Did you rank the institutions?

A. Yes, I did.

Q. And what was the result of that ranking?

A. Well, Alcorn State University, based on this analysis, needs the most attention. Women and the University would be next. Then there's a cluster of four institutions which rank from two eight oh to two point eight five and in descending order, Mississippi State, Jackson, Southern and Valley, and then Delta was in the category by itself that had the fewest.

Q. And what's your overall conclusion as related to your assignment with respect to conditions?

A. Again, I don't find a pattern in these tabulations that would suggest a relationship between the racial composition of the institutions and their position in these tables.

* * * * *

CROSS EXAMINATION

[3897] Q. Now, Mr. Dober, based upon your knowledge and your professional experience, do you believe that you have explained all the data and undertaken all analyses necessary to complete your assignment in this case?

A. In my judgment, based on my experience and in my opinion, the information that I have just reviewed with you is that which is appropriate and useful, applicable to answering those [3898] questions.

Q. And, finally, what is your final conclusion with respect to distribution of facilities upon Mississippi's public institutions of higher learning?

A. I do not see, based on these studies, a pattern that would suggest that the distribution arranges itself in terms of the racial characteristics of the institutions.

* * * * *

[3899] **TESTIMONY OF RICHARD DOBER**

Q. Is it true they needed additional dormitory space at that time?

A. I don't know.

Q. (Attorney gesturing.)

A. You asked me whether I recalled it and I said I probably did make that statement, but I have not studied the issue so I don't have an answer.

Q. You never studied the issue as to whether Jackson State University, Mississippi Valley State University needed additional dormitory space.

A. That's correct. I've never done any study as to what the institutions need based on programs, missions or other kinds of requirements.

* * * * *

[3905] Q. And you're not here today giving any testimony about in terms of a critique of anyone else's testimony in this case?

A. Absolutely not. The only reason I'm here and the total focus of my – I was going to use the word presentation – my remarks, my testimony is that I was asked to do a study on the question of facilities. I've selected, in my judgment, what I considered to be the key factors, the important indicators, which is the amount of square footage available per FTE in the aggregate and by function, and that's all I have to offer in the way of expert witness opinion experience.

Q. Okay. And also I take it you're not expressing any opinion as to which institution has the better facilities in terms of attracting students to its campus?

A. No, I'm not.

* * * * *

[3906] Q. Okay. Do you recall your conclusion expressed in your report that Jackson State is severely underbuilt?

A. Yes, I do.

Q. And that is still your opinion today, is it?

A. Yes, indeed.

Q. What do you mean by underbuilt?

A. In terms of the focus of my remarks, that is the square footage available per FTE, it is below what I would consider [3907] to be, in most instances, with one or two exceptions, the national average and it's the least of all the eight campuses here in Mississippi.

Q. Now, when you're talking here about the, again, net average square foot per FTE –

A. Uh-huh.

Q. – I guess it's obvious, but if you would answer the Court, that this is driven by the actual full-time equivalent enrollment, that is, as the FTE goes up, your net average square footage per FTE would go down given the same physical facilities, is that correct, sir?

A. That's correct.

Q. And at the time of your 1981 study, I believe you testified on direct that essentially Alcorn had the greatest problem in terms of severe problems with buildings? Is that a fair statement of your testimony?

A. Based on our study of the indices that we created, yes.

Q. And again, based on your study of these indices which you created –

A. Uh-huh.

Q. – except for the medical centers, is it your recollection that Delta State was about the best of the facilities?

A. In terms of condition?

Q. Yes, sir.

A. Yes.

[3908] Q. And that also that Mississippi Valley State was about at the state-wide average?

A. I'd have to go check the – to be sure.

Q. Could you do that, sir?

A. Yeah.

Q. I believe you were testifying to page twenty-seven of your report.

A. Okay. Based on the indices on page twenty-seven, which is page three twenty of the larger report, Mississippi State, two point eight five; Jackson, two point eight three; Southern, two point eight one and Valley, two point eight oh. As compared to four point eleven at Alcorn, three six at Women, three four at UM and then one point twelve at Delta.

Q. All right. Okay. Now, could you translate those for us, sir, not in terms of some standard but basically the lower numbers are better and the higher numbers indicate –

A. All things considered, yeah.

Q. The higher numbers indicate a –

A. Worse conditions, yeah.

Q. And that according to your study, then Mississippi Valley State came out about on the average?

A. It's in the middle cluster, yeah.

Q. Okay. Now, this average is composed, if I'm correct, of citations, and I take it by that you mean buildings with elements reported in your category four and category five?

[3909] A. That's correct.

Q. And that's an average of citations per total building?

A. Yeah.

Q. And what we have here, then, is an objective way of saying: Here, I can point you to you this is wrong, this is wrong and a numerical accumulation; is that correct?

A. Those who are interested in knowing specifically what the conditions are, sub-system by sub-system, can

refer to the larger report in which it's listed in some detail. This is a summary of those things in the way that I thought would be useful.

Q. I would have a tendency to agree that anything that comes in one page is better than looking at something that is a couple of hundred pages and we appreciate that effort, but I think what I'm trying to get at here is: when you present this chart, you're studying the square footage as opposed to really the quality of the square footage?

A. That's absolutely correct.

Q. And –

A. Except that quality may be a reflection of condition, so I would like to make that distinction.

Q. Okay, you got my next question already?

A. All right.

Q. I think you're right with me or a little ahead of me, that essentially what we've got here is that obviously you [3910] highlight those elements of the campus that are substandard, deficient and need absolute immediate correction in order to be used, is that correct?

A. Uh-huh.

Q. But that other than highlighting, you did not make a judgmental quality difference by saying that this is an A facility, this is A+, this is C, this is C+, is that correct?

A. That's correct.

Q. And perhaps belaboring the point – you've been an expert witness before, sir, that's correct?

A. Never. And I look forward to never being a witness again.

Q. Having been an expert witness once myself, I sympathize with that. You certainly have been in classrooms where the square footage would be, and let's take an arbitrary square footage of two hundred square

feet, and that in one incident – both classrooms hypothetically would be two hundred square feet. Is this a fair small size classroom?

A. Maybe.

Q. Four hundred square feet then?

A. Four hundred feet.

Q. Might be a little bit better?

A. Okay.

Q. And in one instance although the windows are sealed and [3911] the in lights aren't so glaring that you can't read the book, that you might have a – within that quality, you may have one facility that has the outstanding state-of-the-art, ergometric I think is the term, seats, and the other one would have the old desks that I think a lot of us are familiar with; is that correct?

A. Yes.

Q. And both of those would show up on your study –

A. No, they wouldn't.

Q. – as meeting the requirements, sir?

A. We have not made a study of the quality of space other than condition.

Q. Okay. So you never differentiated between those two types of classrooms?

A. In our study, no.

Q. They would both be space available for use?

A. In both the 1981 – Well, since this study is a derivation of the 1981 study, we have not introduced qualitative factors in any of our studies.

Q. Now, I believe you also indicated that you really didn't go into the whole area of how the state allocated its resources amongst the universities?

A. No. My life isn't long enough to do that.

Q. And you also did not may any study about whether Jackson State University would benefit from the acquisition of more [3912] land, is that correct?

A. I'm not sure. We may have made some reference to that in our 1979 study in a generic kind of way.

Q. What –

A. By that I mean, at that time, we pointed out that there were many things that could be done in the abstract at all campuses that might improve their situation. I don't recall putting it at home to any particular institution.

Q. Now, you did testify earlier today that Jackson State was underbuilt?

A. That's correct.

Q. Did you do any studies about – for lack of a better term – how crowded the various campuses were?

A. No.

Q. So your testimony is essentially that Jackson State would benefit from more buildings, but you do not express an opinion as to whether they need more land for those buildings?

A. At the sake of redundancy and trying to be of some help, the nature of our study focused on what I thought in my experience were key factors in addressing the issue of facilities. And, in my view, the best indicator, the most valuable, the most useful one is square footage per student.

I did not study any other aspects of this other than [3913] building condition, and I have no opinion to offer on other such factors.

Q. And, again, at the risk of being redundant here, that's square footage without attempting to differentiate between quality of square footage as opposed to its minimal adequacy?

A. Again, I can only repeat what I just said: the nature of what I have said and what, in my opinion, is the key factor.

And questions that lead me to other kinds of areas, I do not feel prepared to offer an opinion. I have not studied it and I have no opinion.

Q. And also, sir, your assignment back in 1979-80 was not, as I understand it, to project future requirements—

A. That's correct.

Q. —for the system? That essentially all you did is relay request of institutions for future buildings, although within those categories you did generally prioritize between—for lack of a better term—emergency needs and then those that were immediate but less emergency?

A. I can be a little more helpful than that. On page five two of our report with the bravado of a consultant who tries to do the right thing, we took those lists of capital requirements and suggested a priority list for the Board, and those are described on page five two. And they did begin with [3914] items that we called hazardous conditions, life safety actions and events, requirements that would be useful for accreditation, legal compliance, immediate cost containment, believing that such investments would moderate later higher repair and renovation bills. Energy conservation, because at that time all the indices were pointing to a budget bleed because energy was not—the cost of that was getting higher and higher. Historic conservation, complete projects that were not complete, support missions, and to advance the institution and deferred maintenance. And there was also a system here of making capital appropriattions to begin detailed planning.

Q. And again, sir, on the topic of what you didn't do, and you just mentioned legal compliance there. Are you referring there, I take it, to building codes and safety codes; is that correct?

A. Yes.

Q. You're expressing no opinion about compliance with any of the requirements of the law to desegregate the institutions?

A. No.

* * * * *

[3916] Q. Mr. Dober, did your study, in your study, did you look at whether the state's allocation of resources for higher education with respect to facilities maintained and/or changed the character of the traditionally black institutions?

A. No, I didn't.

Q. Did you look at whether or not the facilities at Jackson State are adequate for, say a research institution?

A. No, I didn't. We did not make a correlation between program and space.

Q. Did you look at your relationship between resource allocation and the character of the particular institution?

A. I don't understand the question.

Q. Is there a definition for character of an institution?

A. I'm not aware of—as I say, I don't understand. Can you [3917] help me with—when you say character, what do you mean?

A. I'm asking you, is there a definition of character of an institution?

A. Is there a definition of character?

Q. Right.

A. Not that I'm aware of.

Q. Were you aware of that when you gave your deposition in 1987?

A. I didn't give a deposition in 1987, I don't believe. Did I? No.

Q. You didn't give a deposition on March 5th, 1987?

A. I did, I'm sorry.

* * * * *

[3919] Q. Now, what page is this in this particular deposition?

A. That would be page fifty.

Q. Own. Come down to line seven and read the question.

A. Okay. Okay. (Reading): Mr. Dober, do you believe that facilities form part of the character of an institution?

* * * * *

[3920] Q. We're on page fifty-one, Mr. Dober, and the question is (reading): Do you believe that it does form part of the character, Mr. Dober? And what's your answer?

A. (Reading): It's well-defined by good campus planning.

Q. And the question is (reading): Could you restate that definition?

A. Yeah. (Reading): It's the accumulation of the physical ambience, buildings, landscape, open space, architectural style, condition, pattern of use, the nature of the environments.

Q. And the next question is: Would you describe the relationship between facilities and the character of an institution?

A. Uh-huh, I just did.

Q. Okay. That was your answer there, too?

A. Yeah.

Q. All right. Now, do you understand what I'm referring to when I ask you about character?

A. I do now. I didn't understand it when you asked the question.

Q. Can you explain to me—Now, let me ask you this question: In your study, did you look at the relationship between resource allocation and the character of the—

A. No, I did not.

Q. Okay.

[3921] A. No.

Q. Well, let me complete the question.

A. Sure.

Q. —character of the traditionally black institutions?

A. No, I did not.

Q. Well, what about character of the traditionally white institutions?

A. No, I did not.

Q. You didn't look at whether any of the institutions had facilities sufficient to support their particular mission, did you?

A. No, we did not do an analysis of the relationship of the size of space and type of space and mission and program.

Q. You didn't look at whether or not there was any particular reason related to race for the differences between the character of Mississippi State which is a land grand institution and the character of Alcorn, which is land grant?

A. No.

Q. What's your answer?

A. No.

Q. You didn't look at whether or not the institutions, say, in 1954, the traditionally black institutions, you didn't look at whether or not they were equal or unequal to the traditionally white institutions at that particular time?

A. No, we did not.

[3922] Q. And did you look at whether or not the money that the state has expended at particular institutions is sufficient to bring them, to make them equal in all respects?

A. No.

* * * * *

TESTIMONY OF DR. VICTOR FEISAL

[3925] DR. VICTOR FEISAL, having been first duly sworn, was examined and testified as follows:

* * * * *

Q. Would you state your address for the record, please, sir.

A. Forty-one eighty-two Oaks Edge Drive, Memphis, Tennessee ZIP code 38117.

Q. And do you mind stating your age also, Dr. Feisal?

A. Fifty-five.

Q. And what is your present place of employment?

A. Memphis State University.

[3926] Q. And your present job title, please, sir?

A. Vice-president for academic affairs.

Q. Would you relate your educational background, please, sir.

A. I received my Bachelor of Science degree from Memphis State University with a major in biology. I received my Masters Degree from the University of Houston with a major in microbiology, and a minor in biochemistry. I received my PhD from the University of Georgia with the major in microbiology, and a minor in microphysiology.

Q. And when did you receive your Masters, please, sir?

A. In 1959.

Q. Starting at that point in time, would you give a very brief overview of your employment history, please.

A. Yes. I joined Memphis State as an instructor in the department of biology. I served there several years in the teaching faculty. During that period of time I coordinated the area of microbiology, teaching primarily courses in bacteriology and microbiology.

On occasions when we had to fill positions within the department, if it was in my area of specialty, I either served as chairman of the committee or as a member of the search committee. I continued in that position until I was appointed in the dean's office in the college of arts and sciences as an associate dean.

Q. If you would just walk us through briefly with the job [3927] title, Dr. Feisal, we'll come back to your responsibilities.

A. Okay. Subsequent to the faculty position in the department of biology, I was appointed as associate dean

of arts and sciences. I served in that capacity for several years.

Later, I was appointed as acting director of public service and research.

In approximately 1972, I was appointed an associate vice president for academic affairs in the area of administration.

In 1985, I served as vice president for academic affairs.

Q. Is that your present position with the University?

A. That's my present position, yes.

* * * * *

[3940] Q. Are there any particular problems associated with the recruitment of minorities?

A. Yes, there are.

Q. Could you relate several of those, based upon your experience?

A. Fundamental to the problem, to the issue of hiring minorities, the supply. There's still a tremendous shortage of the number of black students being graduated from graduate programs with a terminal degree. Supply is fundamental to the problem. It's really the crux of the problem.

Another issue is because of supply, there is an—it's the same principle of supply and demand, that when the supply is short, the demand is high, then there is extreme competition for the services of minority faculty, and that competition is getting extremely keen within educational institutions, but we're also having to compete with businesses and industries for their services. So the short supply and the keen competition is a difficult factor.

Other factors that I think are instrumental in this [3941] problem is the consideration of the geographical location. Another problem is community. Another problem is opportunities for spouse employment.

Some of these are, again, related to all faculty candidates for possible, but I think in the recruitment of minorities, this becomes an increasing problem. I think minorities are becoming more aware that their services are being requested by institutions within our society, and for that reason, again, I say the competition is extremely keen.

Housing is a factor that influences that decision, and I think that's extremely important to a black faculty member.

Q. Are there any financial aspects that come into play as a result of keen competition to which you have referred?

A. Yes.

Q. What would they be?

A. I think in the Southeast, in general, I think we are not in a competitive position to attract minority faculty. That's a general statement. In particular, I think the State of Mississippi has even a greater problem in attracting minorities to the state because of financial conditions. First, salaries are not competitive in this state. Secondly, I think it's common knowledge if one reads the "Chronicle of Higher Education"—and, as I say, [3942] I think this is the *Wall Street Journal* to education as the *Wall Street Journal* is to business. It's common knowledge that the State of Mississippi has had difficulty in funding higher education. So I think those are constraints that the State of Mississippi must deal with.

I made reference to geography. I still say that I think it is difficult for any institution in the Southeast to compete for the services of blacks who are attending universities in the North, Northeast. It's a matter of convincing them that we have something to offer; it's a matter of convincing them that there are opportunities; it's a matter of convincing them that the Southeast is solvent financially. It's a

convincing effort that needs to take place.

We all have that problem. We've experienced it at Memphis State. I think every state in the Southeast experiences this problem. There's a perception—and I think if you compare salaries of the Southeast with other regions you'll find that we do not compare favorably.

Mississippi, I think, has a unique problem in terms of where the institutions are located. Certainly respected institutions, but the community in which they are located I think is a factor that is often considered.

Q. Dr. Feisal, are there differences in availability of faculty by discipline?

[3943] A. Yes, there is.

Q. Could you elaborate, please, sir, with respect to that, and possibly include the identification and availability by discipline?

A. Yes, I think I have some notes here. First, let me say that there is a shortage—if you look at the national figures of representation in predominantly white institutions you will see there's a shortage of minorities in every state. There are disciplines that have a far greater shortage of minorities than others, even those in which there are a large number of graduates, it's still a very short supply.

As an example, in art the number of PhD's in the field of art from 1977 to 1982 was one thousand three hundred and twenty-four. Within that number, there were nine black males, six black females, respectively point six eight percent and point four five percent.

Another discipline, chemical engineering, same period of time, one thousand sixty-seven. Blacks, six black males for point five six percent. Zero black females for that same period of time. Electrical engineering, one thousand six hundred and seventy-nine. There are twenty-nine black males for one point seven three percent, and zero black

female. Mechanical engineering, one thousand one hundred and seventy-four. Eight black males, point six eight percent, [3944] and one black male for point zero nine percent. History, which you would think in social sciences there would be more blacks present, in the case of European history, one thousand one hundred and sixty-five, black males, four, for point three four percent. Black females, two for point one seven percent.

Q. What about in disciplines where, in your judgment, blacks are more heavily represented?

A. Education. I think the data will support that there are more black representation graduate schools and graduating from graduate schools in the field of social sciences and in education. Take social work as an example, there are one thousand four hundred and seventy-eight PhD's in the field from 1977 to 1982. There were seventy-four black males for five point zero one percent. For black females, there were ninety-three for six point two nine percent.

In the field of education, the total field of education out of forty thousand fifty-eight, there was one thousand eight hundred and six black males, for a percentage of four point one five one percent. There was a thousand and eight hundred and forty-six black females for a percentage of four point six one percent. So even in those disciplines where there are a large number of graduates, there is still unrepresentation of minorities.

Q. Is that national data which you just recited?

[3945] A. That's national data.

Q. Turning specifically to this litigation, Dr. Feisal, what have your assignment, please, sir?

A. My assignment was to review the system for the purpose of determining faculty composition, to determine whether the procedures and policies were in place for affirmative action programs, and then to determine, as best as possible the specific difficulties that the State of Mississippi has in attracting minorities to faculty positions.

Q. What have you done in fulfillment of your assignment, please, sir? Just a brief overview will suffice.

A. I reviewed the plan of compliance, I reviewed each campus affirmative action program, I've looked at reports of plan of compliance implementation, I've looked at house documents, statistical data, I've visited each of the campuses with regard to their efforts, their affirmative action program, I tried to ascertain through conversations some of the difficulties that there were they were having, I looked at data on minorities from national reports from the American Council on Education, a national research council from the Southern regional education board, I looked at availability data, I looked at personnel documents with regard to positions in each institution, the number of tenured black faculty, I looked at the mission statements, I looked at the by-laws of governors by the Board of [3946] Trustees, I examined salary budget. So I looked at both internal and external documents you mentioned.

Q. Now, Dr. Feisal, based on your examination and your experience, sir, do you have an opinion with respect to the existence and implementation of a procedure in Mississippi designed to attract minority faculty to predominantly white institutions?

A. Yes.

Q. And what is that opinion, please, sir?

A. After review of documents and after talking to individuals on the separate campuses, I've concluded that each has in place an affirmative action program. Within the affirmative action program there are special features that is directed toward the recruitment of minority faculty for the purpose of soliciting their services to their college campuses or university campuses.

Q. Have you reached any conclusion specifically with respect to the adequacy of that procedure?

A. Yes, I have. I believe it is an adequate procedure by comparison to other institutions in which I concluded from my survey over the years, corresponding with other institutions throughout the country, major universities outside the regional Southeast, that the techniques, the ideas, the programs for attracting minorities is very similar to what every other institution is involved in. [3947] There may be some variation, some small wrinkle to it, but the kind of overall efforts are typical to every other institution, that I'm aware of.

Q. Could you identify, please, sir, some of the components of the procedure in Mississippi upon which you rely in formulating and expressing your opinion?

A. Yes. We call them faculty supplements or faculty incentives or faculty concessions and that is to provide additional compensation for minority faculty, to make the salary more competitive with other institution offers.

Secondly, I know there's a program of "grow your own," that is to enhance a stipend or to provide a stipend to a promising black graduate student for the purpose of nurturing that student, hopefully grooming that student for a faculty position.

Funds were expended for the creation of distinguished professorships to bring black distinguished faculty to the campus, either one semester or one year.

In addition to that, travel funds for minorities, travel funds for spouses, faculty development providing sabbatical leaves for minority faculty who have the masters degree but who are in the progress or who wish to work on the terminal degree, that is, the PhD or the doctorate in the particular discipline. All of those are very typical of what every other institution is doing in terms of [3948] encouraging soliciting and support minority faculty.

Q. Did you find evidence in Mississippi of written procedures, Dr. Feisal?

A. Yes.

Q. And would you identify those for the Court, what documentation you found with respect just to procedures?

A. The procedures were imbedded in the affirmative action plan, they were imbedded in the reports for the plan of implementation. The results of their efforts are documented. In many cases, their efforts were fruitful, and in many cases, their efforts were not fruitful.

Q. Do you have an opinion, sir, as to the relative ability of the predominantly white institutions in Mississippi to attract minority faculty as compared with institutions in other states?

A. Yes.

Q. And what is that opinion, please, sir?

A. I think the State of Mississippi – let me preface that by saying it has the affirmative action program procedures comparable with all other institutions in place. The mechanism is there. But I think the State of Mississippi is at a very significant disadvantage for the reasons I've already elaborated.

But let me quickly say that I do not believe that the State of Mississippi is in a competitive position because [3949] of the salary structure. When you look at salaries, the average salary by rank at each institution within this state and compare that to the national averages, they are several thousands of dollars beneath the national averages. It is not in a competitive position.

Secondly, I think that the fact that the supply of black graduates, black holders of the doctorate is declining.

* * * * *

[3950] I think what Mississippi is face with is the fact that the salaries are not competitive, the supply of minorities is declining, the economic condition in this state is questionable, and the location of the institutions. I think all of those things work against the State of Mississippi.

The other thing that I would point out is that if you look at national data, there is a decline in the number of faculty, full-time black faculty, in approximately thirty of the fifty states. This is not regionally, but it is across the country. Blacks are not entering four-year institutions as they once were. There has been a decline since 1977 through 1984 of about four point three percent.

Given the fact that the enrollment is declining in graduate school among blacks about twelve percent, given the factual information, Mr. Stephenson, I don't know that any state, and, particularly, I don't know that Mississippi has any single strategy or there's any magical cure for that problem.

Q. Well, let me ask you specifically, Dr. Feisal, are you aware of any additional minority faculty recruitment procedure which the State of Mississippi could implement which would assure greater minority faculty representation at the predominantly white institutions?

A. I do not. And I base that on the fact that my survey of major universities, corresponding with affirmative action officers, vice presidents, assistants to the president, there's a central theme: one, they're concerned about the paucity of blacks, they are concerned about their unsuccessful attempts, unsuccessful efforts to employ more blacks, they are also concerned about that there is no magical or single strategy. All of that runs through there.

Most indicate that they are looking for innovative and creative techniques, just as you are and just as we are. The fact that the supply is declining is causing a great consternation on the part of all of us about this issue.

Unless there is an increase in the enrollment of graduate students, black graduate students in graduate school, I think the situation for all of us is going to become more difficult, not less difficult.

Q. Okay.

* * * * *

[3953] Q. Own, you mentioned that you had conducted two surveys, I believe?

A. Yes, ma'am.

Q. Is that correct?

A. Uh-huh.

Q. Now, directing your attention to the second survey, when was it conducted?

A. January, February of this year.

Q. Okay?

A. I believe.

Q. Was it conducted in preparation for this litigation?

A. It was conducted both for that and for our own institution. We do this periodically. We either do it by [3954] writing or we do it by visitation.

Q. Uh-huh.

A. I have one faculty member, Dr. Holly Walker, a black, who is in my office half the time who visits campuses and he interviews affirmative action officers. The primary purpose is to recruit graduate students, but he also gets names of prospective black faculty that we might try to solicit to apply for positions. So we do this either in writing or through visitation.

Q. Okay. Now, how many schools were a part of this survey?

A. Approximately thirty to fifty.

* * * * *

[4091] Q. Dr. Feisal, you were examined on cross-examination, I believe with respect to issues of faculty representations in the State of Michigan and perhaps Wisconsin.

Do you have data with you, sir, that reflects the minority percentage of higher education faculty in those states?

A. Yes, I have.

Q. Would you relate that, please?

A. Yes. I think – Yes, I think in the State of Wisconsin, which has one of the largest universities in the country, the University of Wisconsin at Madison, with a very large enrollment and large faculty, but the State of Wisconsin in 1977 had seventy-three blacks in all of [4092] its state faculty. That is one point one percent of the total faculty.

In 1975, or rather – I am sorry, 1984, they had increased in absolute numbers from seventy-three to seventy-five and it remains at one point one percent. That is the – One point one percent of approximately seventy-eight hundred faculty statewide.

University of Michigan, it has a – I believe – I am sorry, Michigan has three point two percent. 1977, it had three hundred and forty-five black faculty statewide.

1984, it has two hundred and sixty-two faculty, and as one of the attorneys said, the University of Michigan has one of the outstanding programs for recruitment of minority faculty, but, in fact, they have lost over that period of time about twenty-four percent black faculty.

California, with its Massey system, University of California, the most outstanding – one of the most outstanding institutions in this country, certainly a prestigious institution –

* * * * *

[4093] A. Yes. Thirty-four black faculty out of six hundred faculty at the University of California. It has one of the highest salary systems in the country. Certainly climate as well. It is cosmopolitan. It is one of the most prestigious schools.

I think the fundamental problem that we are dealing with here is lack of supply. The statistical data from various reliable sources indicate that there is not an in-

crease in the number of black graduates at the doctoral level, but it is declining.

So long as there is a decline, compounded by a cutback in financial aid, we are going to have this problem of lack of supply.

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TESTIMONY OF BELA J. CHAIN

[4118] THE WITNESS: My name is Bela J. Chain, Jr., C H A I N. B E L A.

DIRECT EXAMINATION

MR. GOODMAN:

Q. Where do you live, please, sir?

A. I live in Oxford, Mississippi.

Q. Would you tell us your educational background, please, sir.

A. I have a bachelor's in chemistry, a master's in education administration and a doctorate in educational administration.

Q. Can you give us a quick review of your employment history?

A. I graduated from the University in 1957. I spent two years on active duty. I taught and coached and was high school principal in the public schools of this state for a total of six years. I've been in higher education since then, first as associate registrar at the University [4119] of Mississippi for two years. One year I was assistant professor of education at Delta State. Returned to the University and was registrar for two years. And then since 1973, have held my current position, whcih is director of personnel and associate professor of education administration at the University.

Q. Since 1973?

A. Since 1973, yes, sir.

Q. Okay. Does the University of Mississippi have an affirmative action officer?

A. Yes, sir.

Q. Have you ever served in that capacity?

A. I have served in that capacity.

Q. Would you tell us, Doctor, what period of time, please, sir?

A. That was part of my responsiblities from 1973 forward until I believe 1983 when we hired a full-time affirmative action officer.

Q. Okay.

A. And then since the fall of last year, in 19- —about August of 1986, I have been serving in an active capacity while we're searching for a replacement for her.

Q. In an acting capacity?

A. Yes, sir.

Q. Who was the University's affirmative action officer between 1983 and 1986?

A. It was a lady by the name of Dr. Erie Jean Bowen.

Q. Fr the record what was her race?

[4120] A. She was black.

Q. You are now the acting affirmative action officer. Tell the Court whether or not any steps have been actually taken toward finding a permanent replacement.

A. Yes, sir, we are actively seeking a replacement. We had a search during the fall and the early part of this year. We decided, after looking at the results of that, to reopen the search and we are in the final stages of the second part of that search at this point.

Q. What do you mean by the final stages?

Q. We feel like we have two candidates—the committee recommended two candidates to the Chancellor and he's evaluating those two and I think negotiating with them to determine which one would be best to fulfill our needs.

Q. And can you tell us for the record, please, sir, the race or races of those two candidates for the position?

A. Both of those candidates are black.

Q. What are the duties and responsibilities of the affirmative action officer at the University?

A. Well, basically, they are to maintain currency in all of the rules and regulations and policies that deal with affirmative action. There is, of course, a recordkeeping requirement involved and a reporting requirement involved with that. I guess the more pronounced responsibility has to do with encouraging and seeing to it that the University understands the obligations that we have in affirmative action and to provide a stimulus to encouraging the University to fulfill its [4121] obligation in that regard.

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[4122] Q. Just tell us why your responsibilities as director of personnel differ with respect to faculty employment as contracted with support staff employment.

A. Well, as the Court may know, faculty are mostly responsible for their own hiring. The autonomy to hire is at the lowest level, and department chairs have the basic responsibility to recommend in that arena, but the faculties of each department are used and groups of them as search committees, if not the whole departmental faculty. So that—the autonomy there is at the lowest level.

Q. Dr. Chain, what has been your responsibility, if any, with respect to the Board of Trustees plan of compliance adopted in 1974?

A. Well, I have had some responsibility in that. I initially assisted in the development of our support document to that plan, and annually since then—I believe annually—I've been involved in our report to the Board of Trustees of the Institutions of Higher Learning.

Q. And when you say involved, tell us a little bit more about that. How have you been involved?

A. Okay, sir. When I was the affirmative action officer – Well, I'll have to correct that just a minute. Initially we had an individual who was an administrator of our office for civil rights and affirmative action compliance. That individual was Dr. John Fay, and I was his assistant at that time. And for the first three or four years until Dr. Fay retired – and I believe his retirement was 1976-77. But during those years, I assisted him in compliling the report. After then, until Dr. Bowen came aboard with us, I was the primary editor, I guess [4123] you could say, of the report. During Dr. Bowen's term I worked with her and assisted her with it, but she was the primary person that was responsible for getting the report together.

Q. Now, as editor or even as assistant editor, tell the Court a little bit about how you went about compiling the information that went into the report.

A. Well, initially, in the initial report – and each year we did two. We got – we received a request from the Board of Trustees office and that request asked for – in the different categories that's under the plan of compliance, asked what we had done during the past year. And we – each year, we got that, we would disseminate those requests for data and for information and for what the University had done to the key individuals in each area that was responsible for this, and generally to the campus as a whole to see what each department had done.

And we received feedback from those department that went through the administrative chain and it would go through the dean's office, vice chancellor's office and so forth and then it would be collected in our office and we would put it together, edited it as far as we could in making it sound like one document rather than several that

had been submitted by several different persons. So that is generally the procedure that is used each year.

Q. Do you have before you a copy of what's been marked Board 094 which is a report to the Board of Trustees by the University of Mississippi relating to the plan of compliance with a date on it of May 28, 1974?

A. I do have that document, yes, sir.

* * * * *

[4125] Q. Turning back in that document to the contents pages, please, sir, at the beginning, the table of contents. Can you tell us whether or not the format of this initial report, how it compares to the format of the reports which followed it or succeeded it?

A. It's my recollection that they are basically the same each year. I think that as I mentioned earlier, we did get a memorandum from the Board of Trustees asking for input in each of one of these areas. And I haven't made a detailed comparison, but it's my recollectin that they are, if not the same, they are very similar.

Q. And this initial report addressed what principal areas?

A. Okay. If I may use the table of contents here, we had a brief introduction and that reiterated our responsibilities under the plan of compliance. There is a section in the report on admissions recruitment, retention and graduation. There is a section on counseling minority students. There is a section of non-discrimination practices. There is a section on other race employment training and promotion. And then a section on cooperative programs and a section on strengthening existing programs to attract other race individuals.

Q. Now, do you have before you a document which has been marked Board 105 which purports to be the twelfth report from the University of Mississippi to the

Board of Trustees in connection with the plan of compliance?

A. Yes, sir, I have that report.

[4126] Q. Can you tell us whether or not the twelfth report identified as Board 105 is the most recent?

A. Yes, sir, it is.

Q. Referring you, please, sir, to the first page of the most recent report, Board 105.

A. Okay, sir.

Q. Is the question of black student enrollment addressed?

A. Yes, sir.

Q. And what was the black enrollment at the University of Mississippi as of the fall of 1985?

A. Okay, sir, according to this information here the enrollment was five hundred and forty-seven in the fall of—right, fall of 1985. Excuse me.

Q. Fall of 1985?

A. Yes, sir.

Q. What was the new freshman black enrollment at that time?

A. We had—the new freshman enrollment at the time states here that it was up forty-five point eight percent or twenty-seven students. I'd have to look here and see what the total—I believe it's five hundred and forty-seven total.

* * * * *

Q. Referring you now, please, sir, to page four of the report which, [4127] again, is Board 105. Does the reports specifically address recruitment?

A. Yes, sir.

Q. Can you tell the Court what the minority recruitment conference is which is referred to on page six?

A. Let me look there just a minute. The minority recruitment conference—we have two of those and I want to

make sure—We have a leadership conference that we have for undergraduate or potential freshmen. The minority recruitment conference is one we have with the law school in which minority pre-law students are invited to the campus and are given an opportunity to see what that profession would be about and what financial aids might be available, the possibility of assistance to them in academic tutorial assistance. And I notice in the fall of nineteen eighty-five we had approximately one hundred students.

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Q. When did that conference originate, if you recall?

A. It's been on-going a number of years. I can't say for sure when it originated.

Q. Turn to page seven briefly, please, sir. Does the report address graduation rates for minority students?

A. Yes, sir. We include the graduation rates each year. We feel like that this is important, not only in admissions of minority students but the graduate rate.

And we are rather proud of our persistent rate of minority students. [4128] We did a study in 1980, I believe it was, that showed that the persistence of our minority students was better if they came as freshmen than the white students. And for transfer it was not that much less. So the persistent rate we've been real proud of, sir.

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[4129] Q. Beginning at page fifteen, does the report address the subject of student teaching in the minority context?

A. Yes, sir, it does.

Q. Does the report address at page eighteen financial assistance for students in the minority context?

Q. Yes, sir.

[4130] Q. Okay. Page nineteen, does the report address student employment in the minority context?

A. Yes, sir, it does.

Q. And at pages twenty-one and twenty-two, does the report address extra-curricular activities in the minority context?

A. Yes, sir, it does.

Q. At page twenty-four, Dr. Chain, is the subject of faculty employment addressed?

A. Yes, sir.

Q. For example, on page twenty-four is the minority faculty shown?

A. The number is—The total number?

Q. Uh-huh.

A. Yes, sir.

Q. And what is the number?

A. The number is twenty-two total minority faculty for 1985.

Q. Of that twenty-two, how many are black?

A. Eleven black faculty, sir.

Q. At page twenty-five, is the subject of minority faculty housing addressed?

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Q. I was referring you to the top of page twenty-five.

A. Twenty-five. Okay. Excuse me. Yes. We do have on-campus housing, [4131] as most of you may now, and minority faculty that are recruited to the University are given priority in that housing as part of the recruitment package.

Q. Are given priority?

A. Yes, sir.

Q. At page twenty-six does the report address distinguished black lectureships?

A. Yes, sir, it does.

Q. Can you tell us a little bit about that?

A. Well, we have a committee at the University, a Minority Faculty Recruitment Committee that has access to some budgeted funds and this committee is using and has used some of those funds to bring in distinguished black lectureships to the campus, and this could be for a week's lecture or for a day's presentation or could be for a longer period of time. In fact, in some cases, it has been for a semester, but we would bring a person in under this program for a semester. So it's varying lengths of time, but to bring minority faculty to the campus.

Q. What's the difference between that, Dr. Chain, and distinguished professorships addressed at page thirty-one of the report?

A. I guess the best way to say it would be in a matter of degree, and there is some overlap. Usually the distinguished professorship program is more a longer term. The design there is to be there for a year, and in some cases and with the expectation that that title and that year's program with us would attract those folks to us permanently.

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[4132] Q. At page thirty-nine and forty of the report, Dr. Chain, is the matter of the plan of compliance funding addressed?

A. Yes, sir, it is.

Q. And does the report reflect age page forty the expenditures in this connection at the University through the period of the first twelve reports to the Board of Trustees?

A. Yes, sir, we have a total figure there of six million one hundred and fifty-seven thousand seven hundred and nine dollars that we have determined to be spent and can be allocated to the affirmative action plan of compliance. It's difficult to make that exact. There are probably some other resources that have gone into it, but those are the ones that we could readily identify.

Q. You could readily identify?
A. Yes, sir.

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[4165] **TESTIMONY OF DR. KENNETH WOOTEN**

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DIRECT EXAMINATION

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Q. Where do you live, please sir?
A. Here in Oxford.
Q. By whom are you employed?
A. University of Mississippi.
Q. In what capacity?
A. I am Registrar and Dean of Admissions.
Q. And how long have you held that position, please, sir?
A. Since about 1970.
Q. As Registrar and Dean of Admissions at the University of Mississippi, have you investigated the number of black freshmen applicants who completed the admission process and who were denied admission to the University for the fall semester of 1986?
A. I have.
[4166] Q. And what is that number, please, sir?
A. Nine.
Q. Nine?
A. Nine.

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[4187] **TESTIMONY OF DR. BERNARD SISKIN**

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DIRECT EXAMINATION

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[4188] Q. Would you state your address for the record, please, sir?
A. 1608 Walnut Street, Philadelphia, Pennsylvania.
Q. And what is your occupation, sir?
A. I am a professional statistician and laborer analyst.
Q. By whom are you employed?
A. National Economic Research Associates, Incorporated.
Q. And what is your job title with that organization?
A. I am Vice-President and Manager of the Philadelphia office.
Q. And would you relate your educational background, please, sir, for the Court?
A. Sure. In 1965, I received a bachelor's degree in mathematics with a minor in economics from the University of Pittsburgh.

I did a year of graduate study in economics and statistics at the University of North Carolina at Chapel Hill.

In 1970, I received a PhD in statistics from the Warden School at the University of Pennsylvania.

Q. And would you provide a brief overview of your employment background?
A. 1968, when I finished my course work, I joined the faculty at Temple University as an instructor.

1970, upon completion of my course work, I became assistant professor at Temple University.

In 1973, I became Chairman of the Department of Statistics, served as Chairman for five years.

In 1984, I resigned a tenured associate professorship from [4189] Temple University to devote fulltime to consulting and joined the firm which was a predecessor to National Economic Research Associates, Inc.

Q. For the record, would you identify Temple University please, sir?

A. Temple University is a large metropolitan university located in Philadelphia. It is a comprehensive doctoral granting research institution, offering PhD's in almost all areas, as well as most professional areas, law, medicine, pharmacy, et cetera.

Q. Very briefly, what were your job duties while at Temple?

A. Well, my duties were primarily to teach statistics courses, to both graduates and undergraduates, to serve in various capacities as a normal faculty member would, Tenure Committees, Promotions Committees, various university committees, as well as a period where I had administrative responsibilities as Chairman of the Department of Statistics.

I also served for a year as Director of the Research Group or Laboratory in the Business School.

Q. As Chairman of the Department of Statistics at Temple, did you ever address the issue of program duplication?

A. Yes. There was an issue raised of the issue of program duplication, course duplication of statistic courses offered throughout the university.

Statistics courses were offered by the Math Department, Statistics Department, Medical School, Social Departments, Psychology Department, et cetera.

[4190] The President deaned a committee, who I was a member of, consisting of a Chairman and administrators, to study the issue of duplication of courses and programs in the area of statistics within Temple University.

Q. And how was that study conducted?

A. We as a committee met. We reviewed the courses being offered, the textbooks being used, the students being taught, the course outlines for each of the courses, we reviewed all of the programs being offered, what they consisted of in terms of course, mission, student body, and

after almost a year of meetings, we made our recommendations to the President.

* * * * *

Q. All right. What are your job duties and responsibilities with the organization?

A. My duties consist of two major responsibilities. One is as a researcher. I am responsible for doing statistical and economic research consulting, and as Director of the Philadelphia office, I am also charged with administrative duties in managing the Philadelphia [4191] office.

Q. All right. Dr. Siskin, what is applied statistics?

A. Applied statistics is the application of statistical theory and techniques to any one of a variety of areas to solve problems and be able to determine what is an appropriate influence that can be drawn from the data in that discipline.

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[4192] Q. All right. You have mentioned the United States Department of Agriculture.

Have you served as the statistical consultant to any other governmental agencies?

A. Yes, I have.

Q. Could you identify some of those, please, sir?

A. I am currently and for a long time had an ongoing consulting relationship with the United States Department of Justice, having worked for—currently working for the Civil Rights Division, the United States Attorney's Office, the Indian Affairs Office, and the Credit Division within the Justice Department.

I have also worked for the Legal Law Enforcement Assistants Administration when it was in existence as a consultant.

I have worked for the Department of Labor as a consultant, and I have mentioned the Department of Agriculture.

* * * * *

[4193] Q. Could you identify some of the entities or groups before whom you have appeared?

A. I have lectured at professional statistical association meetings to the American Statistical Association group on the various uses of statistics in a legal setting. I have also been invited and spoken quite often to various American Bar Associations or groups.

I have been on faculty and talked to practicing lawyers. I have been invited to speak at the Federal Bar Association. Various law schools, as well as the National Conference for Aging and the National Conference of Women Lawyers.

* * * * *

Q. Well, have you written any books?

A. I have written three textbooks and a chapter in an encyclopedia of the use of statistics in management.

MR. STEPHENSON: Your Honor, we tender Dr. Siskin as an expert in the area of applied statistics.

THE COURT: Do you wish to voir dire on qualifications, Counsel?

* * * * *

[4194] MR. STEPHENSON: No, sir, not at all. His program duplication analysis is a statistical analysis. That is what he is here to testify to, his use of statistical information and the appropriate conclusions and information that can be drawn therefrom.

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[4195] MR. STEPHENSON: With respect to the program area, yes, I am offering him specifically, Your

Honor, with respect to his designation of expertise in the area of applied statistics. Now, as he has indicated, that covers a broad range of subject matters.

With respect to the program issues, he has analyzed the statistical validity of the approaches and methodologies utilized by Dr. Conrad in this proceeding, and he is prepared to testify with respect to the statistical validity of those approaches.

THE COURT: All right. He will be accepted as to those approaches.

* * * * *

[4197] Q. Dr. Siskin, based on your analyses, do you have an opinion with respect to the statistical validity of Dr. Conrad's program duplication analysis?

A. Yes, I do.

Q. And what is that opinion, please, sir?

A. The first opinion I have is that the concept, as a statistical measure of a dual curricular system as presented by Dr. Conrad is [4198] meaningless because there is no unitary system.

Every school duplicates to some extent what is offered in another school. So any comparison between one and seven schools or two and any six schools will be under his definition a dual curricular system. Therefore, there are a hundred and sixty-two dual curricular systems in the State of Mississippi in the public university system.

To have any meaning, one needs to have norms or standards by which to judge the amount of duplication or to determine whether or not there is any sort of pattern or not present.

The second opinion I would have is with respect to duplication, and with respect to patterns, there clearly is no pattern of duplication associated or based on racial identification of the institutions. There is no more dupli-

cation when looked on comparing the predominantly black institutions to the predominantly white institutions than one would expect to find looking at any three institutions and comparing to any five institutions irregardless of their racial identification.

* * * * *

[4199] So, clearly, what the data shows in terms of patterns is that there is no relationship or pattern of increasing or large duplication related to racial identification of the universities. There is clearly a pattern associated with whether it is a comprehensive university or non-comprehensive university.

Among the non-comprehensive universities, which the black universities are all non-comprehensive, the least amount of duplication exists among the three black non-comprehensive universities as among any other set of non-comprehensive universities.

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[4206] A. Sir, do you have an opinion with respect to the statistical validity of Dr. Conrad's program quality analysis?

A. Yes, I do.

Q. What is that opinion, please, sir?

A. The opinion is that I agree with the numbers, since it is true if you compare the average of the predominantly three black schools and five predominantly white schools, you will find the black schools lower, but I would point out and I think the appropriate conclusion is [4207] that it had nothing to do with the racial identification of the schools. The differences are not associated with race at all, but are simply inherent in the differences between comprehensive universities and non-comprehensive universities.

Now, it is confounded, the racial identification of the school with whether it is a comprehensive or non-comprehensive university.

What you find is that comprehensive universities, of course, in terms of programs, library, faculty with PhD's and so forth, all have considerable greater numbers on average than the non-comprehensive universities.

If one looks at the averages controlling for whether it is a comprehensive university or non-comprehensive university, one finds no pattern with respect to race.

The black non-comprehensive universities look very much like any non-comprehensive university. The white ones or black ones.

* * * * *

[4213] Q. And do you have an opinion, sir, with respect to the statistical validity of Dr. Conrad's analysis of the change in number of programs from 1981 to 1986?

A. Okay. Here I think you do see a pattern somewhat associated with race between 1981 and 1986. The number of programs at all levels at all institutions declined, generally.

Generally, there was a reduction in programs. If you look [4214] at the data, what you will find the largest reduction occurred among the comprehensive universities.

Okay. Less of a reduction occurred among the non-comprehensive universities. At the bachelor's and master's levels in terms of programs, either the least or next to least amount of reduction occurred at the predominantly black institutions. So, among all of the schools – among the non-comprehensive schools, there was a pattern that the reduction of programs was the least among the predominantly black schools than among the predominantly white schools. This is illustrated in Board Exhibit 240 and 243.

* * * * *

[4215] Q. Thank you, sir. Now, if we could, please, sir, focus on your examination of student enrollment.

Now, at the predominantly white institutions in the context of a qualified pool, would you relate, please, sir, the approach that you took and the efforts that you expended in this analysis.

A. Well, what I wanted to do was compare the enrollment at each of the schools with the pool, qualified pool from which the students potentially could be drawn.

To do this, I had to define two items, obviously. The first one was what was the racial mix of the enrollment in the student body.

* * * * *

[4216] The other picture was the qualified pool from which you can draw it from. To get the qualified pool, the first step was to get information on students, potential students and the students who would meet the standards or exceptions standard set by the university.

To do this, I obtained from the American College Testing Bureau their ACT tapes for 1984, 1985, 1986. What they sent me was a tape that contained everybody in the State of Mississippi who took the ACT's, everybody outside of the State of Mississippi who requested that their scores be sent to a Mississippi university.

The information contained was the social security number of the individual named, the ACT scores they obtained, their credits that they had meeting various standards.

Two other fields that I used was the field that said, what is your highest high school educational attainment plans. There were two year college, four year degree, so on and others that I said, I want to become a doctor, PhD or whatever.

[4217] There was also a field which indicated when they planned to attend college.

A third field which I used was the—They are asked to give preferences as to what schools they would like their ACT's to be sent to. Preferences to where they would like to go to school and where they would like their ACT sent. I was given information for those schools. If one of their or any of their preferences were any of the eight public universities in Mississippi, they were placed on the tape, so that I knew who preferred and in which order in the eight schools, if they preferred any.

From this data, I did the following to create my qualified pools:

The first thing I did was merge all of the tapes together and got rid of the duplicative people. A lot of people take it in their junior year and again in their senior year. So, I dealt with a single record for each individual, coded to the time they expected to enter college. Everybody that planned to enter in 1985, the fall of 1985.

If the person took the test in the previous year as a junior and not a senior, I would use that record. If he took it both as a junior and senior, I would then use that record that—I would take the highest ACT test score, whatever the highest was, which is the standard used by most universities. That gave me my base data to start with.

Then I eliminated from the pool those that said their highest [4218] goal was a two-year college, because I was only dealing with people who said I want to attend a four-year college or planned to complete a four-year college. Now, that does not mean that somebody is not going to go to a junior college first.

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I then broke that pool up into two groups. One group was those people who had a 15 ACT composite score or

better and met the minimum graduate requirements in 1986, with all of the exceptions that allowed under the rules for that.

Okay. That was one set of qualified pools, which is people if they applied automatically would have been accepted.

Then everybody else who scores between a 9 and above on the ACT composite was placed in another pool, which was they could be accepted under the exception rule. That allowed me then to define a qualified pool, which is a weighted average, which meant five percent or fifty students of the previous freshmen class or whichever was larger were assumed to come from the exception pool, and the remaining ninety-five percent of the class was assumed to come from the qualified pool that met the minimum standards.

From that, I then under the assumption that within this pool, blacks and whites in each of the pools, are equally likely to go any of [4219] the schools and equally likely to apply and show up, what would I have expected, therefore, the racial mix of the student body to be.

I compared that with the racial mix of what the freshmen class actually was.

Q. All right. Dr. Siskin, based on your examination, do you have an opinion, sir, with respect to the actual representation of blacks at the predominantly white institutions in comparison to their statistical representation in the qualified pool?

A. Yes, I do.

Q. And what is that opinion, please, sir?

A. With respect to Delta State University, Mississippi State University, Mississippi University for Women, and the University of Southern Mississippi, I find that the representation of the freshmen class is statistically in parity with the representation in the qualified pools, and the

inclusion indications would be within these qualified pools blacks and whites were equally likely to apply, get accepted and wind up at these universities. That is true for basically 1985 and 1986.

With respect to the University of Mississippi, I would conclude that there is something in the process in blacks in the qualified pool being less likely to attend and showing up at the University of Mississippi than whites in the qualified pool.

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[4224] Q. Dr. Siskin, have you made any other analysis with respect to [4225] student enrollment in the context of a qualified pool?

A. Yes, I did.

Q. What did you do, please, sir?

A. Well, I did a study which looked at the interaction between student preference, where they wind up and their ACT scores.

* * * * *

A. When somebody takes the ACT test, they indicate and – are given a choice of indicating preferences for universities for which they would like to attend and for which the ACT scores are supposed to be sent to.

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[4226] I have tabbed up everybody whose first preference was for a white; one of the predominantly white institutions. So, when I say first preference for predominantly white institution, given their preference, and maybe it is their second or third, again, they have a preference for a state institution in the State of Mississippi. Their first preference among the State institutions was for a predominantly white institution. That is identified on the statement of whose preferences were predominantly a white school.

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When I did the qualified pool in the previous studies, of course, they were all considered. No, everybody in the State. What I was testing was the assumption was there any difference in black and [4227] white interests given there in the qualified pool for any of the predominantly white institutions.

This study, I am focusing now on what they actually asked for, what they actually had a preference for, and now I am defining who in that group, of course, indicated a preference for a predominantly white institution in the State of Mississippi, and that preference would be their first preference in terms of a State institution.

* * * * *

Q. When, sir, was the preference indicated by the student?

A. Preference is indicated by the student when he signs up to take the ACT test. It is before he takes the test. It is on the form he fills out is my understanding.

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[4228] A. Okay. So, on one side I took the ACT tapes and identified those people. As I said, who had a preference for a predominantly white school and sorted those off who had ACT composite scores of 14 or less.

Okay. Then I matched those with another data set that I was given, which was a list that the school supplied me with, which was their student body in 1986, identified by social security number and identified by race.

So what I determined was, given you explain the preference for the white school on the ACT, I then looked to see where did he wind up.

Did he wind up in a predominantly white school or predominantly black school or did you wind up in none of

them. Okay.

So, I wanted to see what happened to these people who expressed the preference, where did he wind up, what happened, where did he go.

What table 194 represents is the results of what happened to these people, where they actually wound up in the system.

Q. And what conclusion do you draw, sir, based upon Board 194?

A. Well, the conclusions that I draw are that, first, the predominantly black institutions are not – Not really affected in the sense of becoming black because blacks who wanted to go to white schools, who scored below 14, wind up at the black schools. There are a total of only ninety-three blacks that wind up at predominantly black schools who asked to go to a white – Who indicated a preference for a white school when they were taking the ACT's.

[4229] Okay. But eventually, wound up scoring below 15 and wound up at a black school. They may or may not have applied to white schools. I don't know, but clearly that is the maximum number of people that are shifted, okay. It is clearly minimal.

So, in essence, the predominantly black schools are not black because blacks wanted to go to the white schools are being shifted to the black schools because of their ACT scores.

Q. Did you reach any other conclusions, sir, with respect to this table?

A. The second conclusion you reach is if you look at the 13 and 14's, the scores of those people who were black and wanted to go to a predominantly white school, fifty-one out of the eighty-six actually wound up in a white school, so you are more likely to actually wind up at a white school than they would at a predominantly black school.

Q. Where did you get that number, fifty-one, sir?

A. If you look at the—Given they are going to be in the system, I should say. If you look at the table, you will find that there are two hundred and nine people, blacks, who scored a 13 or 15. That is just adding up the numbers under 13 and 14. There are two hundred and nine blacks who scored a 13 or 14 who had on the ACT indicated a preference for white institutions. Of those, thirty-five wound up at a predominantly black institution, fifty-one wind up at a predominantly white institution. And a hundred and fifty-eight wind up other universities, not going to school or Temple for all I know. I don't know what happens to them. They do not wind up in the Mississippi [4230] public universities system.

So given you are going to wind up in the Mississippi public school system and you scored a 13 or 14 on your ACT's, the blacks are more likely to wind up in a white school than in a black school.

Secondly, when you look at this, you will see there is a substantial number of whites as well that indicated a preference for a white school that score 13 or 14 and do not wind up at a white school. They do not wind up in the system essentially. They wind up four hundred and forty-five of the five hundred and twenty-one wind up outside of the system, either junior college or another university or whatever.

* * * * *

A. The net result of this is given simply everybody that got a 13 or 14 who stated a preference for a white school went to a white school was automatically accepted and did want to go and did show up, the [4231] impact on the white schools would be triple. The percent of black in the white schools would go up by roughly one percentage point. Actually, from twelve point eight to thirteen point

one, which is not a significant change in the representation of the universities.

* * * * *

Q. Looking further at this question of preference, Dr. Siskin, did you look at the degree to which students scoring below 15 on the ACT failed to request that their scores be sent to public four-year institutions in Mississippi?

A. Yes, I did.

Q. What did you find?

A. Well, of the people who scored—both black and whites who scored below a 15, approximately half never asked their scores to be sent to any of the eight public universities in the State of Mississippi.

Q. Continuing, Dr. Siskin, did you prepare any additional [4232] tables addressing the issue of preference of blacks in predominantly white institutions?

* * * * *

This shows you where they wound up, which of the schools and what their score was. It also shows that there were eighty-nine blacks when they took the test indicated a preference for a white school was their first choice. They scored above a 14 on their ACT's, subsequently met the standards, and if applied would have been accepted, but actually wound up at predominantly black schools by choice.

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[4233] Q. Dr. Siskin, let's focus, now, please, sir, on your faculty [4234] analysis.

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[4236] A. When you do a snapshot, it is who is there at a given point in time to what the available labor pool is. The available qualified labor pool would be.

When you do a snapshot, you measure a lot of things. You measure hiring and you also measure termination and you measure hiring over a whole period of time.

You are looking at who ultimately is still employed, which is the result of hiring, who leaves, who gets tenure and the whole process. It represents decision tracking from the 1950's all the way through to the current time.

Q. Now, would you turn, please, sir, with respect to the hire study, and define for the Court what you mean by that term?

A. I posed a snapshot of simply the hires. I asked the schools to identify for me who they hired in each of the departments. Now, from 1974 forward. So, I looked at actual hires. With the exception of one school—wait a minute. The University of Southern Mississippi could only supply me back to 1977. I got the hires by department from each of the schools.

Comparing that to the labor force, assuming the same educational premises, the existing faculty, I obtained a comparison of the hiring and what would one expect in terms of the qualified available pool, so I have two studies.

One that focuses on the hiring decisions and one that looks at a snapshot in 1985 and 1986.

[4237] Q. Now, based on these analyses, Dr. Siskin, do you have an opinion with respect to the actual representation of blacks at the predominantly white institutions as contrasted with their statistical representation in the qualified faculty pool?

A. Yes.

Q. What is that opinion, please, sir?

A. With respect hiring, from 1974 through 1986, in certain cases 1987 data, the percent blacks hired statistically significantly exceeds the black representation in the qualified labor pool.

We conclude, therefore, that there is some affirmative action in the hiring process associated with being black.

There were some fifty-three more black hires than one would have expected given the representation of qualified labor pool. That is highly statistically significant. That pattern holds at each of the five schools.

THE COURT: What are the years of that?

MR. STEPHENSON: That is 1974, Your Honor, through 1986, with one exception. I believe he included 1987 data for Mississippi State University and University of Mississippi and for the University of Southern Mississippi, it only commences with 1977.

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Q. Did you reach any other opinions?

A. Yes. The second conclusion that the data shows us is that the turnover rate for blacks is higher than for whites. Blacks are less likely to remain employed when you look at the snapshot. There was a [4238] higher turnover rate.

As a result, if you look at a snapshot of the faculty currently, if you look at those persons hired since 1974, you will find overall that they are in line with the relative labor market, not in excess, but almost perfectly in line with the relative labor pool.

If you look over the total faculty, since forty percent of the faculty—current faculty snapshot consists of the persons that have been onboard prior to 1974—prior to 1974, the data indicates it was a—The black representations is lower than that in the qualified labor pool.

The result is in aggregate, there still is lower representation of qualified labor pool totally due to the faculty remaining from 1974. At—that, however, is only true at—patterns clear at two of the schools, the hiring since 1974 and the turnover of older faculty has since eliminated that discrepancy.

Q. Did you prepare any tables, sir, that reflect the bases of these opinions?

A. Yes, I did. Tables 440 summarizes the hiring results. 214 through 217 to 431 give the individual school results on hiring.

Q. Did you say 430?

A. That is the—430 is summary of faculty status during this period. Total number of hires, person into faculty rank, three thousand four hundred and fifty-seven.

Of those, one hundred and ninety-three were identified as black by the university disc. This gives us five point five percent black hiring rate.

[4239] Okay. Looking at the discipline they are hired into, the typical degree for that discipline, the availability nationally for persons with that level of education in those disciplines, if they selected randomly from that labor market, you have have expected a hundred and thirty-nine point nine people to be black or a hundred and forty to be black.

As a result, there were fifty-three more blacks hired than one would have expected given the representation of the qualified labor pool in this country, given qualified labor pool as being defined as the appropriate discipline with the appropriate level of educational attainment. That difference of fifty-three people represents a difference from what you would expect of four point five seven standard deviation. It is in parentheses meaning over, rather than a short fall. There are fifty-three additional blacks hired than one would have expected and that difference represents four point five seven deviations in the affirmative sense. That would meet any standard from a statistician's viewpoint to conclude that clearly there was something in the selection process with respect to race given their availability in the pool.

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[4240] Q. Could you comment, please, sir, with respect to 431 on the statistical significance here of the standard deviation?

A. Yes, sir. Well, the data shows for the University of Mississippi, there were sixty-one black hires, given their discipline of hires in normal degrees, one would have expected thirty-nine blacks to have been hired. There are twenty-two more than one would have expected given the labor force. The qualified labor force. That would be a statistical significance overage, the University of Mississippi.

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[4248] Q. Okay. Would you tell us the opinion you expressed at that time and whether that is still your opinion today?

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A. Well, what I said I—it is my opinion, I believe, that in various circumstances one can trace the historically or predominantly black institutions and can generally trace it back to a variety of factors, historical factors, which from legacy, from segregation or whatever.

Q. And this, oftentimes, can have a current effect today?

A. I have trouble when you say current effect today. I mean if you trace the history of any institution to where an institution is today, is a function of its history, so there's always an historical effect and trend in history, whether it be Temple University or Mississippi State or Alcorn State.

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[4275] Q. Okay. Now, Doctor, if you would pay particular attention to the 1986 data for Mississippi State University, could you give us the number of standard deviations there?

A. Mississippi State?
Q. Yes, sir.
A. 1986. Three point two four.
Q. Again, significant; is that correct?
A. That's correct.
Q. Significantly low in terms of actual blacks as opposed to the estimated, even assuming your pool; is that correct?
A. Just Mississippi State, that's correct.

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[4287] Q. Did you do any study of black schools in the state, the black universities?
A. No, I did not study the black universities.
Q. Did you look at their faculty at all?
A. No.
Q. Would it surprise you to find that they are able to find quite a few black faculty members?
A. It wouldn't surprise me. I haven't studied it so I couldn't tell you what it means.
[4288] Q. Assume a hypothetical for instance, Doctor, assume that hypothetically you have five schools where you have, oh, let's say, about a hundred teachers in each, and out of those teachers one was black, ninety-nine were white.

Assume further, you have another three schools and you've got fifty teachers and assume forty-nine are black and one is white in each instance. Is this another one of these examples where you don't have to do any calculations, you can just say that didn't happen by chance?

A. What do you mean by—what didn't happen by chance? If the pool, for instance, in this country is generally around two or three percent PhD's and it goes down depending on the discipline and us in some disciplines, any time you have a faculty which is fifty or sixty

percent black, I'll tell you it's something related to race in your selection process, which is not picking from that pool in a random process.
Q. Assume the numbers I gave you to be the totality of the pool, Doctor.
A. Totality of the pool?
Q. Yes, sir.
A. That makes no sense. Predominantly white schools don't recruit only from existing universities in the State of Mississippi. That makes no sense.
Q. Sir, I asked you to assume that's the totality of the pool.
A. Okay. Then one has predominantly black faculty and one has predominantly white faculty.
Q. Could that distribution have happened by chance?
A. No.

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[4307] Q. When you compared—this relates to your analysis of the racial makeup of the historically white institutions. When you—you compared the actual enrollment to the estimated enrollment and when you discussed that in your deposition a couple of times, you used the—you said you were looking to see if blacks and whites were equally comfortable in choosing a school. Do you recall using the word comfortable?
A. I don't remember using it, but that's—since essentially there are not—the pool fifteen and above is a noncompetitive pool, you apply and you're accepted. It represents who applies. It's not really screening the system, so it would be—it's the students' choice of going there, rather than the university's choice of selecting from among those students.
Q. So if you use the word comfortable in your deposition, the conclusion about the University of Mississippi is

that blacks are not – you know, they are uncomfortable; is that –

A. They are less likely to apply there, to that extent, uncomfortable is not a bad choice of words.

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[4311] Q. Okay. You don't have an analysis that's similar to what you did for historically white institutions for the traditionally black institutions?

A. That's correct.

Q. And you did do that in Alabama, isn't that right, and it showed the traditionally black institutions were extremely more heavily black than one would expect?

A. That's correct. And I would expect that here as well. I would have – you know, having looked at the numbers, I'm sure the same result would occur.

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TESTIMONY OF DR. MALVIN WILLIAMS

[4335] Q. Now, did the Board of Trustees provide additional funds to help address those weaknesses?

A. No, there were no additional funds provided for academic program review.

Q. How did you overcome those over weaknesses, starting with program one, please. Well, have those weaknesses been overcome?

A. As of now, we have removed all of the deficiencies of academic programs review.

Q. Okay. Starting under the first program, can you just briefly tell us how you were able to overcome that weakness?

A. It's hard to say it program by program.

Q. Okay.

[4336] A. I can try to generally describe for you.

Q. Okay. Fine.

A. We tried to look at – most of the program deficiencies included summary of things like library holdings, instructional equipment, additional faculty. Those were – computer equipment – those were probably the three major concerns.

What we really had to do was not do some other things. For example, we had some priorities set in trying to upgrade science laboratories for which we have just not been able to do. We had to buy – for example, agriculture was listed as having deficiencies in library volumes. Some of the other programs, for example, like biology might not have shown deficiencies. We had to, in essence, not do some things we would have ordinarily have done to try to correct the deficiencies of our program review.

The main thrust of how that really will effect us is really – won't be known until we go through another Southern Association Review or another NCATE review because we had to not do some things a couple of years that we would normally try to do in order to correct the weaknesses of programs review.

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[4338] Q. Well, Doctor, did the program help – did the program review process help or hurt Alcorn?

A. Well –

Q. And, if so, explain to the Court.

A. That's – that's kind of – that's kind of difficult to answer. I can only answer that by probably saying it probably helped those programs for which marginal ratings were made.

On the other had, I'm not sure of what effect it's going to have on some of the other programs because of the way we had to go about trying to meet the recommendations of the weaknesses of the marginal programs. But there are some instances that some of the programs that we strengthened

you could say that it helped some of theose, but the overall effect of review, I don't think will be determined for Alcorn until we go through another complete review cycle of Southern Association [4339] and some of the other professional accreditations that we have.

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[4342] **TESTIMONY OF DR. NATHANIEL BOCLAIR**

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Q. You may refer to that. There is a—could you—could you tell the Court how many programs were listed as marginal at Mississippi Valley State University, the highest number during the process of programs review.

A. I believe there were nine programs essentially that we had to deal with as being marginal. It is somewhat difficult to speak—

Q. Could you name them, please?

A. Name the programs?

Q. Yes.

A. Okay. We had a bachelor of arts program in speech that was classified as marginal, a criminal justice Program that was classified as marginal, elementary education at the bachelor's level and also at the master's level, computer [4343] science, biology, industrial technology and I believe those are all.

Q. There's more than eight, is it not true. Is it not true that—

A. Uh—

Q. Is it not true that—strike that. There's a column labeled weaknesses in your notebook. Could you tell the Court what that means?

A. The column labeled weaknesses are those deficiencies as cited by the consultant and the Board Staff that Mississippi Valley State University should address and rectify before the program could receive approval.

Q. And could you tell the Court, what was the cause of Mississippi Valley State having the marginal program as classified?

A. There were several categories, and I will just list those by category rather than by program.

Q. Sure.

A. Among the categories listed was in some instances the facilities needed improvement; In some instances, the faculty load was too great; the faculty qualifications were not what the consultant considered that they should have been. Faculty salaries were too low, academic support and equipment were not found to be adequate to support, library holdings were inadequate, and there was some curriculum inadequacies [4344] also.

Q. Did the Board of Trustees provide additional funds to help address these weaknesses?

A. No, they did not.

Q. Did they—could you tell us just how—well, could you tell the Court how many of the marginal programs—how many, if any, of the marginal programs have been reclassified?

A. All of them have been reclassified as approved.

Q. Okay. Now, could you tell the Court how you—how you were able to do that without additional funds?

A. Well, what we had to do was to prioritize and put some things off that needed doing in order to do this. For example, if one program had a progress report due in May of this year and another program was due in a subsequent year, we would try to address the needs for that program this year, and then the next year, we would try to place the other program on a priority. But we had to neglect such items as faculty salaries, and the record clearly indicates, we are negligent in that particular respect.

And we had to put our building repairs off and we were able to use federal funds from a Title III Grant in order to rectify some of the inadequacies that were there.

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TESTIMONY OF ARTHUR PEOPLES, JR.

[4362] THE WITNESS: My name is Arthur Peoples, Jr.

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Q. Dr. Peoples, would you please state your formal educational background and training.

A. Well, I'm a native of Starkville. I finished high school in Starkville, Mississippi. I went to Jackson State University for a bachelor of Science degree. I have a Masters and PhD degree from the University of Chicago.

Q. Okay. And, Dr. Peoples, would you please state beginning with your most recent occupation and move sequentially backwards, please give your history of employment.

A. I spent two and a heal years in the United States Marine Corps. After I left Jackson State and received my Masters degree, I became a teacher in the Gary, Indiana Public School System, in which I became a Principal of a school there. I [4363] left Gary in 1964 and came back to Mississippi, going to Jackson State University as assistant to the president. I received a post-doctoral fellowship at the State University of New York at Binghamton, served as assistant to the president, went back—came back to Jackson State in 1966, became vice president. In 1967, I became president of Jackson State, a post I held until May of 1984. Subsequent to that, I became a distinguished professor at the University Center in Jackson, a post I held until I retired in November of 1985.

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[4368] Q. Would you please explain to the Court what is the defenition of marginal?

A. That means that the program has several deficiencies in terms of, perhaps, insufficient numbers of teachers or insufficient numbers of students or insufficient equipment or inadequate curriculum. These were the types of judgments that were used, types of factors used to come around with the marginal grading.

Q. Were you provided—would you please explain to the Court what, if any, resources did you receive from the Board of Trustees or the Board staff in order to bring the program from a marginal status to an approval status?

A. We did not receive any above the ordinary formula support from the Board in this respect. What you were—what we would get would be the normal allocation based upon the formula, which were SCH produced the previous year, multiplied times the appropriate factors. But so far as extra funds to bring these programs up to par, we received none. What we [4369] had to do was to—well, we had to take from other areas, which caused them to be deficient, in order to bring these up to par and not lose that particular course of study.

Q. Dr. Peoples, are you familiar with the mission statement adopted by the Board of Trustees in 1980?

A. Yes, in a general sense, I am.

Q. Please explain to the Court, what was the mission of Jackson State University under that mission statement.

MR. STEPHENSON: To which we object, Your Honor. Again that's not proper rebuttal. The mission have been an issue ever since the commencement of the litigation.

MR. YOUNG: Your Honor, if he says he's familiar with it, I'll go on.

THE COURT: Well, the record's clear, it's an urban university. You may go on.

MR. YOUNG: Thank you, Your Honor.

MR. YOUNG: (Continuing)

Q. Dr. Peoples, would you please explain to the Court what, if any, influence you had in the Board adopting that mission for Jackson State University.

MR. STEPHENSON: Same objection, Your Honor.

MR. YOUNG: Your Honor, I don't believe that was in the record. As a mater of fact, Your Honor, I think –

THE COURT: Is there any testimony by the defendants that they – that nothing was done by Jackson State? Is this

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[4371] THE COURT REPORTER: "Please explain to the Court what was the mission statement of Jackson State University under the mission statement."

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A. Yes, I did. As a matter of fact, before the Board [4372] promulgated its mission statements, we went to the Board of Trustees and petitioned that Jackson State be given the mission of urban university based upon our information that the federal government was about to pass legislation which would establish in each state an urban grant college, and we wanted to be sure we were that urban grant college so that we could – would be able to receive federal money to carry out research to solve urban problems.

We went so far as to propose to the Board how this would help Jackson State to be of more service to the State.

Now later on, about the – I guess two or three years later, when the Board established its mission, it complied to some extent with our pequest. We had requested, when we went before the Board, the sever degrees, that is academic programs, be a part of the urban mission.

In particular, we wanted to have in our School of Education, degrees which would training principals and

teachers to be able to sove, that is, to teach in problematic urban situations.

We also felt that social work should be a part of Jackson State's mission since we were a natural laboratory int he big city of Jackson. We also felt that Jackson State should be given the lead in communications because we had the three major networks there in Jackson and Jackson State already had a radio station.

[4373] So we did provide input to the Board, however, we were chagrined when we received just the designation urban with no – not what we had asked for.

Q. Dr. Peoples, what programs did you receive in order to meet you mission?

A. We didn't receive any program. We were told, if we came before them and requested programs, they would give it consideration.

Q. Did you –

A. But we never did receive any of those degrees that we were asking for.

Q. You said you were told if you brought any programs before them, they would give them consideration?

A. Right.

Q. Did you bring any programs before them for consideration?

A. Yes.

Q. Would you name the programs and when did you bring them, as best you can.

A. I don't recall the specific dates, but we did ask for the program in the teaching supervision and administration of urban situated schools for the Doctor of Education degree in that area. We also asked for the Masters and PhD degrees in mass communications. And we asked for the Masters degree in social work.

Q. Dr. Peoples, did Jackson State University devise or

create [4374] any programs which were considered unique in the State of Mississippi.

A. Yes.

Q. Would you please name those programs.

A. Well, the one outstanding program was the one in meteorology that we established at Jackson State.

Q. And was that program funded by the Board of Trustees?

A. Indirectly – well, it was funded in terms of the formula, which is more or less enrollment and SCH driven and this was a low enrollment – highly technical program we got very little funds. It was really established more by help from the National Weather Service, which is called, NOAA, the National and Atmospheric Administration. They provided for us two professors who would be receiving directly from NOAA about fifty thousand dollars apiece, and we also worked with the local weather service at the airport. They provided us adjunct professors. So we got off the ground for the first four uears with help from the National Weather Service and the local weather service at the airport.

From the trustees, we received the normal formulated allocation, which is based upon the enrollment, and since this was a new program with very low enrollment initially, we didn't receive very much help. The weather service thought we were going to eventually be taken over and supported in this program by the Board of Trustees.

[4375] I did petition the Board to include our meteorology program as one of the centers of excellence and thus get a supplementary, that is, extra funding from the State legislature the same as was received by Ole Miss, State and Southern in their centers of excellence, but the Board did not see fit to submit that to the legislature.

Q. Did you program – is the program still – explain to the Court, Dr. Peoples, how long did NOAA, the National Oceanic Agency continue to fund the meteorology program?

A. This went of for about a four uear period. I don't know what's going on now, but I do know that those professor's salaries, they gradually reduced the salaries, their part of the salary. At first, they paid the whole amount, and then they got down to three-fourths, down to half and so on, and we had to pick up these salaries as they phased themselves out of it, and with the expectations that they had that this would be picked up by the Board of Trustees. We did pick it so far as we could, but we were not setting any extra money. It was a law enrollment couse.

But the point I'm making, I was trying my best to keep this unique program as one means of attracting other race students to Jackson State, and I was hoping to get extra funding from the Board above and beyond the formula through the centers of excellence programs. We were not successful.

Q. Dr. Peoples, you mentioned the center of excellence. [4376] What, if any, other programs did you prepare did you propose to the Board to be place under the Center of Excellence?

A. Well, we felt that our urban mission should afford for us research capability. So through the MUD Foundation, we received a three-year grant to establish an urban research center. This was a three-year grant. Now, as this grant was being phased out, I petitioned the Board to include, as an extra appropriation, whether it be centers of excellence or an extra appropriation funding for our urban research center and the grant ran out and I never got the extra funding.

* * * * *

[4381] Q. Dr. Peoples, I believe you have been, you were president of Jackson State University from 1967 through 1984?

A. Yes, I was.

[4382] Q. And isn't it true, sir, that during your tenure that Jackson State University experienced growth unparalleled by any other period in its history?

A. Yes, sir.

Q. And isn't it also true, sir, that during this period that there was an increase in the size and quality of the faculty and administration?

A. Yes, there was.

Q. And isn't it true, sir, that the student enrollment more than tripled during this period?

A. Yes.

Q. And isn't it also true, Dr. Peoples that academic programs were established in multiple proportions in new fields such as industrial technology, computer science, mass communications and meteorology?

A. Yes.

Q. And isn't it also true, sir, that five schools were established during this period, that is, the school of business and economics, the school of education, the school of liberal studies, the school of science and technology and the graduate school?

A. Yes.

Q. And isn't it also true, sir, that during this period, the graduate school grew from a single master's in school administration to thirty-five master's, fifteen specialist's and a [4383] doctorate in early childhood education?

A. Yes.

Q. And isn't it also true, sir, that during this period accreditations grew from regional accreditation by the Southern Association of Colleges and Schools to some several national accreditations by other organizations?

A. Yes.

Q. And isn't it true, sir, that these accreditations, these national accreditations included accreditations by the National Council for Accreditation of Teacher Education, the National Association of Industrial Technology, the Council on Rehabilitation Education, the American Chemical Society, the Council on Social Work Education, the National Association of Schools of Art Design, the National Association of Schools of Music and the National Association of Schools of Public Affairs and Administration?

A. Yes.

Q. And isn't it also true, Dr. Peoples, that during this period, the University experienced monumental physical expansion?

A. It received quite a bit of expansion. Monumental, I don't know, but it was quite a bit.

Q. I'm reading from your vitae, Dr. Peoples.

A. I thought that sounded quite familiar. I thought I had seen that before.

[4384] Q. Would you agree, please, sir, against that that University experienced monumental physical expense?

A. Yes.

Q. As a matter of fact, total construction was approximately twenty-seven million dollars, was it not?

A. Yes.

* * * * *

OFFERS OF PROOF

[2899] Dr. Erie Jean Bowen: Former Director of Student Services and Affirmative Action at the University of Mississippi.

* * * * *

[2901] She would testify that the Chairman of the Search Committee and/or Committee Member – Law School Faculty Member – yes – got up and stated, "We only have several hours to select a new dean and we have three

finalists. I know that Dr. Louis Westerfield has been endorsed by the law students at the law school; however, we only have several hours, and I suggest that we exclude discussion on Dr. Westerfield because he will not be Dean. We need to spend – We need to spend our time on persons who have a real good change of becoming dean. The law school is not ready for a black dean, so I suggest that we discuss the qualifications [2902] of the two white finalists."

No real discussion occurred with respect to Dr. Westerfield's qualifications for Dean. At the end of the meeting, all committee persons were warned that no mention of what had taken place should be taken out of the room, because if this information was discussed – If this information was disclosed, the university would be in trouble.

* * * * *

[2906] May it please the Court, Ms. Linda Redmond, offer of proof:

Ms. Linda Redmond's offer of proof would be that she was employed by the University of Mississippi during 1983, 1985 period, and that her major area was in education of the handicapped.

That she had worked several – She had worked several years to obtain a grant to do Outreach Services at the University of Mississippi.

That finally when her proposal – And she had been promised the directorship of the project.

Finally, her proposal was funded, and once her proposal was funded, they gave the directorship of the project to a white male.

That because of that and other practices that she found offensive, she left the University of Mississippi.

May it please the Court, we offer as proof of Dr. Williams his deposition taken June the 22nd, 1980, at the

University of Mississippi, and we also offer the deposition that was taken on November the 14th, 1986.

May it please the Court.

(Documents passed.)

MR. CHAMBLISS: We also in summary –

THE CLERK: Have these depositions already been filed with the Clerk's Office? I think they have?

MR. CHAMBLISS: The 19 – May it please the Court, the 1980 deposition is on file. That is one of the housekeeping matters we have to deal with. I am not sure whether the 1987 is. I would think not. But the – The 1986 deposition is not, but that is one of the things we intend to do before the trial is over, enter all of the depositions into the record.

THE CLERK: The reason I was asking, I did not think this later one was. I would like to mark it as an exhibit – Plaintiffs' Exhibit Number 365, the 1986 deposition of Lucius Williams.

* * * * *

[2914] A requirement that blacks serve on each such committee established at the recommendation of the Black Student Concern Committee was in effect at least until 1984, but a shortage of black faculty made it impossible to put black students on all such committees.

Now blacks do not serve on each Search Committee. The requirement that a black should serve on every committee has now been modified to state that a black should serve where possible.

Search Committees may have a black graduate student. He remembered only three black faculty members in 1975 when he came to the University of Mississippi.

* * * * *

He assumed the Affirmative Action Officer role about

1983. There is a – There is a thirty percent turnover rate in faculty.

There is about ninety positions or more and his calculations were thirty percent of three hundred – Using three hundred and fifty-five.

Dr. Williams has to sign-off approximately one hundred and eight [2915] times a school year. He has refused to sign-off on occasion where white applicants who had less qualifications were favored over black applicants with more qualifications.

Nevertheless, each time he refused to sign-off on an applicant, the white applicant was hired anyway.

* * * * *

On the Search Committee for the Law School Dean were three blacks, Dr. Lucius Williams, Erie Jean Bowen and Bobby Harges.

Were there – That is H·A R G E S, a law student. There were three finalists among – which or [illegible] black, Louis Westerfield.

At the beginning of the meeting of the subcommittee, the following statement – the following was stated: "that the committee only had a short time in which to make a serious decision among the candidates, and the committee time would be best served by concentrating on the two white candidates."

It was stated that the University of Mississippi was not ready for a black Law Dean, and that discussions on candidates who had a chance [2916] for being on it.

Dr. Williams, if allowed to testify, would testify that Dr. Marks, the Academic Dean, on many occasions stated to him that he did not believe in Affirmative Action and that blacks wanted a free ride.

That as long as he was responsible for hiring and firing at the University of Mississippi, that there would be no affirmative action taken.

* * * * *

[2922] MR. CHAMBLISS: Thank you, Your Honor. Okay. In addition to what I have proposed to the Court on Dr. Peoples, and I think it is in addition to, Your Honor, Dr. Peoples if he were allowed to testify, he would, in essence say – testify that over the years, that programs have been deprived – that the College Board has deprived black schools of programs that could attract other race students.

* * * * *

[2923] With respect to his further testimony was that black – historically black institutions were, in fact, a sideline action and that the major programs were, in all instances, given to white schools.

He would testify that the – this was true in the beginning when black schools had what you call special education committees to only deal with the black schools and the black presidents could not appear before the College Board until the present where you are able to appear, but really don't have no real influence on decision-making, because even you were to vote on things you could not have the numbers to have your will be done.

* * * * *

[2929] And that to date, the blacks have never gotten their first choice in terms of blacks who are independent. And he stated that they had nothing to do with Dr. Harrison, who was independent. He was a dentist.

With respect to governors, as a government William Winter was asked to appoint a black or a lawyer or somebody who was independent, and Governor Winter just stated he didn't see no reason why there should be a lawyer or anybody independent, that he saw all people as being equal and that he basically said that he was not going to

listen to any of the black concerns with respect to appointing somebody to governors.

* * * * *

DISTRICT COURT JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

NO. GC75-9-NB
(Senior Colleges)

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, GOVERNOR, STATE OF MISSISSIPPI; W. RAY CLEERE, COMMISSIONER OF HIGHER EDUCATION; BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING, BETTY A. WILLIAMS, PRESIDENT, THOMAS D. BOURDEAUX, VICE PRESIDENT, WILLIAM H. AUSTIN, JR., FRANK O. CROSTHWAIT, JR., BRYCE GRIFFIS, WILL A. HICKMAN, CHARLES C. JACOBS, JR., WILLIAM M. JONES, JOHN R. LOVELACE, M.D., DIANE MILLER, DENTON ROGERS, JR., SIDNEY L. RUSHING, GEORGE T. WATSON, MEMBERS; DELTA STATE UNIVERSITY, KENT WYATT, PRESIDENT; MISSISSIPPI STATE UNIVERSITY, DONALD W. ZACHARIAS, PRESIDENT; MISSISSIPPI UNIVERSITY FOR WOMEN, JAMES W. STROBEL, PRESIDENT; UNIVERSITY OF MISSISSIPPI, R. GERALD TURNER, CHANCELLOR; UNIVERSITY OF SOUTHERN MISSISSIPPI, AUBREY K. LUCAS, PRESIDENT; ET AL., DEFENDENDANTS

JUDGMENT

In accordance with a memorandum opinion issued this day in the above styled and numbered cause, it is hereby ORDERED AND ADJUDGED:

That the claims of the plaintiff class and class representatives be, and are hereby, DISMISSED;

That the claims of the United States of America be, and are hereby, DISMISSED; and

That the above styled and numbered cause be, and is hereby, DISMISSED.

THIS, the 10th day of December, 1987.

/s/ Neal B. Biggers, Jr.
NEAL B. BIGGERS, JR.
United States District Judge

ORDER GRANTING CERTIORARI

In the Supreme Court of the United States

No. 90-1205

UNITED STATES, PETITIONER

RAY MAYBUS, GOVERNOR OF MISSISSIPPI, ET AL.

ORDER ALLOWING CERTIORARI. Filed april 15, 1991.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. This case is consolidated with 90-6588, *Jake Ayers, et al. v. Ray Mabus, Governor of Mississippi, et al.* and a total of one hour is allotted for oral argument.

April 15, 1991

ORDER GRANTING CERTIORARI

In the Supreme Court of the United States

No. 90-6588

JAKE AYERS, SR., ET AL., PETITIONERS

v.

RAY MAYBUS, GOVERNOR OF MISSISSIPPI, ET AL.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to Questions 1 and 2 presented by the petition. This case is consolidated with 90-1205, *United States v. Ray Mabus, Governor of Mississippi, et al.* and a total of one hour is allotted for oral argument.

April 15, 1991

(6)

Nos. 90-1205 and 90-6588

FILED
JUL 1 1991
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.

JAKE AYERS, JR., ET AL., PETITIONERS

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

ROGER CLEGG
BARBARA S. DRAKE
Deputy Assistant Attorneys General

JEFFREY P. MINEAR
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether Mississippi has satisfied its obligation, under the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, to dismantle its racially dual system of higher education, when state action continues to interfere on the basis of race with a qualified student applicant's choice of which school to attend.

PARTIES TO THE PROCEEDING

The petitioner, plaintiff-intervenor in this action, is the United States. The plaintiffs are Jake Ayers, Jr., Vernon B. Ayers, Williams B. Ayers, Hattie James, Margaret James, Leola Blackmon, Lillie Blackmon, Shirley A. Porter, Kenneth Spearman, James T. Holloway, Dave Collins, Louis E. Armstrong, Darryl C. Thomas, Albert Joe Williams, George Bell, Johnny Sims, Thelma H. Walker, Randolph Walker, Bennie G. Thompson, Virginia Hill, B. Leon Johnson, Pamela Gipson, Janice K. Miggins, and Floyd Alexander; and a plaintiff class consisting of all black citizens residing in Mississippi, whether students, former students, parents, employees, or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by the defendant Board of Trustees. The defendants are Ray Mabus, in his official capacity as Governor of the State of Mississippi;* the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi; members of the Board of Trustees, in their personal and official capacities: Cass Pennington, Joe A. Haynes, Dianne Miller, Nancy McGahey Baker, Frank Crosthwait, Jr., Will A. Hickman, J. Marlin Ivey, Bryce Griffis, William M. Jones, James W. Luvene, Sidney L. Rushing, and Dianne Walton; Delta State University, and its president, F. Kent Wyatt, in his official capacity; Mississippi State University, and its president, Donald W. Zacharias, in his official capacity; Mississippi University for Women, and its president, Clyda S. Rent, in her official capacity; the University of Mississippi, and its chancellor, R. Gerald Turner, in his official capacity; the University of Southern Mississippi, and its president, Aubrey K. Lucas, in his official capacity; and W. Ray Cleere, in his official capacity as Commissioner of Higher Education of the State of Mississippi.

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* Pursuant to Supreme Court Rule 35.3, the current governor of Mississippi, Ray Mabus, has been substituted for William Allain, governor at the time this case was tried.

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In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1205

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.

No. 90-6588

JAKE AYERS, JR., ET AL., PETITIONERS

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The en banc opinion of the court of appeals (Pet. App. 1a-44a) is reported at 914 F.2d 676.[1] The panel opinion of the court of appeals (Pet. App. 45a-103a) is reported at 893 F.2d 732. The opinion of the district court (Pet. App. 104a-201a) is reported at 674 F. Supp. 1523.

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[1] Citations to "Pet. App." refer to the petition appendix in No. 90-1205.

JURISDICTION

The judgment of the court of appeals upon rehearing en banc was entered on September 28, 1990. The private petitioners filed their petition for a writ of certiorari (No. 90-6588) on December 14, 1990. On December 18, 1990, Justice Scalia extended the time in which to file a petition for a writ of certiorari to and including January 26, 1991 (a Saturday), and the United States filed its petition (No. 90-1205) on January 28, 1991. The petitions were granted on April 15, 1991.[2] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment and Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, are set forth in the petition appendix (Pet. App. 202a).

STATEMENT

The State of Mississippi operates eight public universities. Prior to this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), Mississippi designated five of those universities as schools for white students and three as schools for black students, and it strictly enforced a racially segregated system of higher education. Mississippi has since adopted what it submits are race-neutral admission policies and practices with respect to those institutions. The question in this case is whether Mississippi has satisfied its obligation under the Equal Protection Clause and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, to dismantle its racially dual system of higher education.

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[2] The Court limited its grant of the petition in No. 90-6588 to the first two of the five questions presented in that petition. J.A. 1888.

A. The Mississippi System of Higher Education

1. *Mississippi's Universities at the Time of* Brown *v.* Board of Education. Mississippi manages and controls its eight public universities through the Board of Trustees of State Institutions of Higher Learning, which has plenary authority over the institutions' operations. Pet. App. 106a, 109a, 114a. At the time of this Court's decision in *Brown* v. *Board of Education*, Mississippi had in place a rigid policy of racial segregation in higher education. Mississippi maintained five institutions—the University of Mississippi (UM), Mississippi State University (MSU), the University of Southern Mississippi (USM), Mississippi University for Women (MUW), and Delta State University (DSU)—for white students. The State maintained three other institutions—Jackson State University (JSU), Alcorn State University (ASU), and Mississippi Valley State University (MVSU)—for black students. Pet. App. 109a-114a.[3] Racial segregation permeated every aspect of Mississippi's university system, including governance and administration, student enrollment, faculty selection, and staff employment. *Id.* at 114a, 169a.

At the time of *Brown*, Mississippi's white and black universities were "both separate and unequal." Pet. App. 114a. The white institutions offered "a full range of program offerings" at the undergraduate, graduate, and professional levels. The educational offerings at the black colleges, however, "were limited to teacher education, agriculture and mechanical arts, and the practical arts and trades." Pet. App. 114a-115a & n.2. And even where the white and black schools offered similar programs, as in the case of agricultural training, the programs at the white schools were far superior to those at the black schools.[4]

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[3] The names of the institutions have changed over time. We refer to them throughout this brief by their current names.

[4] For example, both Mississippi State and Alcorn State are land grant colleges that provide agricultural training. The State, how-

In 1954—the year of this Court's decision in *Brown*—the Board of Trustees issued a report describing higher education opportunities under the dual system. The Board's report, entitled "Higher Education in Mississippi" (the Brewton Report), acknowledged that educational equality for white and black students in Mississippi was "very distant." Pltf. Exh. 200, at 146 (J.A. 813). The Brewton Report found that in 1954, while blacks made up more than 45% of the State's population, Mississippi spent only 15.7% of its higher education budget on its black colleges. *Id.* at 127, 148 (J.A. 816); see also *id.* at 297. Mississippi lagged behind even most other southern States in the funds it allocated to black higher education and in the proportion of the black population enrolled in institutions of higher learning. *Id.* at 130-132. Black faculty members were paid less than their white counterparts, and the faculties at the black institutions were characterized by "serious" deficiencies in "training, experience, and tenure." *Id.* at 143, 148; see *id.* at 142, 293, 294. Mississippi provided no graduate or professional education for blacks within the State, and it provided limited funds for black students to pursue such studies outside the State. *Id.* at 148-149 (J.A. 816). Facilities such as libraries at the black institutions were far more limited than those at the white institutions. *Id.* at 239, 335-336.

2. *The First Decade After* Brown. Mississippi's policy of de jure segregation in higher education continued despite this Court's decision in *Brown*. Rather than desegregating its universities, Mississippi reinforced the dual system by allowing its white universities to establish and operate off-campus centers, offering duplicative programs for white students, near the black colleges.

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ever, preferentially directed funds (including federal funds) to Mississippi State rather than Alcorn State. See, *e.g.*, Pet. App. 151a-152a; U.S. Exhs. 695e, 695h (J.A. 386, 389).

Pet. App. 146a-150a, 169a; see Tr. 107-109 (J.A. 1314-1315).[5]

In 1961, James Meredith, a black applicant, sought admission to the University of Mississippi. The Governor and Lieutenant Governor of Mississippi, the Mississippi Legislature, members of the Board of Trustees, and University officials all attempted to "impede and deter" his admission through various means, including restrictive admission policies. Pet. App. 116a. Meredith invoked his Fourteenth Amendment rights in federal court, and, in 1962—eight years after the *Brown* decision—was admitted under court order as the first black student to attend one of Mississippi's historically white universities. *Ibid.* See *Meredith* v. *Fair*, 306 F.2d 374 (5th Cir.), cert. denied, 371 U.S. 828, enforced, 313 F.2d 534 (5th Cir. 1962).

3. *The Second Decade After* Brown. The segregated character of Mississippi's university system changed little between 1964 and 1974. By 1967, all of Mississippi's historically white universities had admitted at least one black student. Pet. App. 116a-117a. The undergraduate enrollments at those universities remained, however, overwhelmingly white, and the enrollments at the historically black universities remained (with the exception of five white students at Alcorn State) exclusively black.[6] While the black institutions began hiring white

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[5] The University of Mississippi, Mississippi State, and the University of Southern Mississippi began offering courses at Jackson, near Jackson State University, in 1951, 1961, and 1964, respectively. Pet. App. 147a-148a. By 1966, the three centers had been merged into the Mississippi University Center in Jackson, offering continuing education, but not degrees, for area residents. *Ibid.* Mississippi State opened the Vicksburg Center in 1952, offering courses for local school teachers. *Id.* at 150a. The University of Southern Mississippi opened the Natchez Center, about 40 miles from Alcorn State, in the fall of 1962. *Id.* at 148a-149a.

[6] Undergraduate enrollments at the eight institutions in the fall of 1968 were:

faculty members in the 1960s, the faculties at the white institutions remained all white until the 1970s. *Id.* at 117a.

The relative educational opportunities at the various institutions also remained much the same. In 1966, the three largest white institutions (the University of Mississippi, Mississippi State, and the University of Southern Mississippi) offered a broad range of undergraduate and graduate programs. Pltf. Exh. 202, at 22-40. The course offerings at the largest black institution, Jackson State, focused primarily on undergraduate training in education and liberal arts and were comparable in scope and number to those offered at the two smallest white colleges, Delta State and Mississippi University for Women. *Id.* at 41-48. The programs at Alcorn State and Mississippi Valley remained essentially limited to agricultural and vocational courses and teacher training.[7]

	Total	Black	% Black
Historically White Institutions:			
UM (main campus)	2765	39	1.4%
MSU	7754	73	0.9
USM	6536	105	1.6
DSU	2275	79	3.5
MUW	2480	26	1.0
Historically Black Institutions:			
JSU	3686	3686	100.0
ASU	2355	2350	99.8
MVSU	2497	2497	100.0

See U.S. Exhs. 456a-456i.

[7] Alcorn State had retained its land grant functions, and offered limited additional programs in undergraduate arts and sciences and teacher training. Pltf. Exh. 202, at 41. Mississippi Valley provided training in education and vocational subjects, with a small number of fields of study in the liberal arts. *Id.* at 49-50. Only three graduate programs were authorized at the black colleges: two master's programs in education at Jackson State and one master's program in agricultural education at Alcorn State. *Id.* at 41, 46; U.S. Exh. 490 (J.A. 249).

In 1969, the United States Department of Health, Education and Welfare (HEW) initiated Title VI enforcement efforts, seeking from the defendants a plan to disestablish the formerly de jure segregated system. Pet. App. 118a. The Board of Trustees responded in 1974 through the submission of a "Plan of Compliance." The Plan of Compliance expressed the goal of improving educational opportunities for all Mississippi citizens, with "particular emphasis on equal access and retention for members of minority races to be enrolled and/or employed" at all institutions. U.S. Exh. 1, at 3 (J.A. 66) (footnote omitted). It set numerical goals for increased other-race student enrollment, *id.* at 31, which had changed only marginally since 1968.[8] The Plan also set numerical goals to increase other-race faculty employment at each of the institutions, *id.* at 32, and called for remedial programs and special recruitment to achieve these goals, *id.* at 6-17 (J.A. 66-77).

The Plan acknowledged the need for alterations in the curricula and programs of all the institutions to "help stimulate changes in the racial mix on the campuses." U.S. Exh. 1, at 18 (J.A. 78). It placed a "high priority on strengthening existing programs at the three histori-

[8] Full-time undergraduate enrollments for the 1974-1975 school year were:

	Total	Black	% Black
Historically White Institutions:			
UM (main campus)	5771	239	4.1
MSU	8404	634	7.5
USM	6770	544	8.0
DSU	2123	268	12.6
MUW	2047	266	13.0
Historically Black Institutions:			
JSU	4477	4323	96.6
ASU	2377	2376	99.9
MVSU	2457	2457	100.0

See U.S. Exhs. 172-180. See also Pet. App. 50a.

cally black institutions," *id.* at 19 (J.A. 79), and stated that those institutions were to be given priority in the allocation of new programs, *id.* at 20 (J.A. 80). The Plan also called for increased cooperation among the historically white and black institutions throughout the State. *Id.* at 21-24 (J.A. 83-84). Finally, the Plan stated the Board's intention to request a special legislative appropriation of some $3 million for the implementation of the Plan, with $2 million of this fund to be allocated to the three historically black universities. *Id.* at 25, 34 (J.A. 85, 92).

HEW ultimately rejected the Plan of Compliance because, among other deficiencies, it failed to address the desegregation of the State's separate system of junior colleges. U.S. Exh. 407 (J.A. 195-219); see also Pet. App. 119a. The Board of Trustees nevertheless adopted the Plan. The Plan, however, was never fully funded by the Mississippi Legislature, Tr. 951, 1065-1068, 1072-1073 (J.A. 1444-1445, 1448), and its other-race enrollment goals—particularly those for the University of Mississippi and for the black institutions—were not met.[9]

4. *The Third Decade After* Brown. In 1975, the private petitioners, representing black citizens of Mississippi, initiated this action against respondents, the Governor and State educational officials. Their complaint alleged that Mississippi had maintained the racially segregative effects of its historically dual system of public higher

[9] Compare U.S. Exh. 1, at 31, with enrollment data, note 11, *infra*. The Plan's faculty employment goals were not met at the white institutions. Compare U.S. Exh. 1, at 32, with Bd. Exhs. 208-212 (J.A. 1225-1234); see U.S. Exhs. 742a, 742c, 742f (J.A. 398-400). Other portions of the Plan, such as the priority for new programs at the black institutions and the reallocation of programs to enhance integration, were not carried out. See pp. 11-14, *infra*; see also U.S. Exh. 1, at 13 (J.A. 74); Tr. 952-953 (J.A. 1446-1448) (clearinghouse for faculty applications discontinued); U.S. Exh. 1, at 13-14 (J.A. 74-75); Tr. 1070-1072 (J.A. 1448-1449) (special efforts to train minority faculty not fully implemented due to lack of funding).

education, thereby violating the Fifth, Ninth, Thirteenth, and Fourteenth Amendments, 42 U.S.C. 1981 and 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* Pet. App. 105a-106a. Shortly thereafter, the United States intervened pursuant to 42 U.S.C. 2000h-2. The United States alleged that the State authorities had failed to satisfy their obligation under the Equal Protection Clause of the Fourteenth Amendment and Title VI to dismantle Mississippi's dual system of public higher education.

During the next twelve years, the private petitioners, the United States, and respondents attempted, ultimately without success, to reach a consensual resolution of their differences. See Pet. App. 108a-109a. During this period, the State conducted further studies of its system of higher education. In 1980, the Board of Trustees began a system-wide review of all programs below the doctoral level. *Id.* at 142a-143a. That review revealed that despite the goal of the 1974 Plan of Compliance to "strengthen[] existing programs at the three historically black institutions," U.S. Exh. 1, at 19 (J.A. 79), those universities continued to offer inferior educational opportunities.[10]

The State also made several changes in its administration of its university system. In 1981, in conjunction with the Board of Trustees' system-wide program review, the Board issued "Mission Statements," which assigned missions to each institution. The Mission Statements were to identify the academic objectives of each institution in the context of a state university system. The Statements were based upon conditions at the institutions in

[10] Under the program review, most academic programs were rated either "approval" (meaning a "good quality program") or "marginal" (meaning a "poor" quality program). The historically white universities accounted for 83% of the programs given an "approval" rating while the historically black universities accounted for 75% of the programs given a "marginal" rating. Tr. 3610-3612 (J.A. 1737-1738).

1981, including enrollment, faculty, resources, and traditional areas of strength, and thus had the effect of maintaining the status quo with respect to program offerings at the various institutions. See Tr. 3653-3656 (J.A. 1744-1746).

The Board identified the three largest historically white institutions—the University of Mississippi, Mississippi State, and the University of Southern Mississippi—as "comprehensive" universities. Those schools were authorized to offer a greater range of programs and more advanced training than the other institutions and were permitted to continue to offer doctoral degrees. Each was assigned a leadership role in certain disciplines. Pet. App. 141a. The Board designated Jackson State, the largest of the historically black schools, as an "urban" university. The Board directed Jackson State to offer programs and conduct research, on a more limited basis than the comprehensive institutions, relating to its urban community. *Id.* at 141a-142a.

The remaining two historically white schools (Delta State and Mississippi University for Women) and the remaining two black schools (Alcorn State and Mississippi Valley) were designated as "regional" universities. Despite the geographic connotation of that designation, those schools are not "regional" in the sense that each serves a designated region or locality. For example, Delta State and Mississippi Valley compete for students within the same region, and Mississippi University for Women serves primarily women students. Rather, the "regional" designation denotes that the schools were to offer primarily undergraduate programs, but could continue their limited graduate offerings if those programs were accredited. Bd. Exh. 274, at 3-4 (J.A. 1257).

Thirty years after this Court's decision in *Brown*, more than 99% of Mississippi's white students were enrolled at the historically white schools, while more than 71% of the State's black students were enrolled at the historically black schools. Mississippi's historically white universities continued to serve student bodies that were from 80% to 91% white, and Mississippi's historically black universities continued to serve student bodies that were from 92% to 99% black.[11]

The historically black schools continued to provide fewer educational opportunities than the historically white schools. On the whole, the historically black schools offered fewer programs, fewer graduate programs, and fewer fields of study than did the historically white schools, and they had a higher percentage of unaccredited programs. U.S. Exhs. 685h-685j (J.A. 311-313).[12] This pattern persisted even when comparing schools with the same "Mission" assignment. For example, the historically

[11] Undergraduate student enrollments for the 1985-86 school year were:

	Total	White	Black	% White	% Black
Historically White Institutions:					
UM (main campus)	7354	6657	436	90.52	5.93
MSU	9942	8823	1119	88.74	11.26
USM	9017	7258	1284	80.49	14.24
DSU	2911	2399	512	82.41	17.59
MUW	1979	1622	350	81.96	17.69
Historically Black Institutions:					
JSU	5271	84	4845	1.59	91.92
ASU	2290	99	2191	4.32	95.68
MVSU	2103	11	2089	0.52	99.33

See U.S. Exhs. 738a-738h. See also Pet. App. 50a-51a. The data represents headcount enrollment (total students) except for the University of Southern Mississippi, for which full time equivalent data (number of students adjusted by a factor for credit hours) is shown. See Tr. 364.

[12] In 1980, only 52% of the eligible programs offered at the historically black institutions—including only 20% of the eligible programs offered at Alcorn State and only 10% of those at Mississippi Valley—were accredited. U.S. Exhs. 500-501 (J.A. 256-258). In 1984, despite the Board's comprehensive program review, only 70% of the eligible programs offered at the historically black universities were accredited. U.S. Exhs. 685h-685j (J.A. 313).

white "regional" school, Delta State, was superior to the historically black "regional" schools, Alcorn State and Mississippi Valley, on the basis of the numbers of programs and major fields, library volumes, percentage of faculty with doctorate, percentage of faculty with highest degree from a research university, and freshmen ACT scores. Indeed, Mississippi Valley ranked last in nearly every objective measure of academic quality. U.S. Exhs. 685h-685n (J.A. 311-317).[13]

Measures of faculty quality followed the same pattern. In 1986-1987, as in 1979, Jackson State's average faculty salary was lower than those of the three historically white comprehensive universities, and the average salaries at the two historically black regional schools, Alcorn State and Mississippi Valley, were lower than salaries at the two historically white regional schools, Delta State and Mississippi University for Women. U.S. Exh. 694q (J.A. 371-381).[14] As in 1981, the faculties at the historically

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[13] The 1986 rankings of the institutions on various criteria were:

	Traditionally White Institutions					Traditionally Black Institutions		
Criteria	UM	MSU	USM	DSU	MUW	JSU	ASU	MVSU
No. of bach. programs	3	1	2	4	7	5	5	8
No. of grad. programs	2	1	2	5	7	4	6	7
Total programs	2	1	3	5	7	4	6	8
Fields—bach.	2	2	1	4	6	5	6	8
Fields—masters	2	3	1	5	7	4	5	7
Fields—doct.	1	3	2	4	—	4	—	—
Library vol.	3	2	1	6	5	4	7	8
% Faulty with doct.	2	1	4	3	7	5	5	8
% Faulty with degree from research univ.	1	2	4	5	8	3	6	6
Average ACT score	1	2	5	4	2	7	5	8

See U.S. Exhs. 685h, i, k-n (J.A. 311, 312, 314-317). See also Pet. App. 60a-61a n.24 (as corrected above).

[14] The average faculty salaries were:

black schools tended to be less experienced and less highly educated than those at the historically white schools (*ibid.*).[15]

The same pattern persisted in the case of the quality of the institutions' physical facilities. A comparison of the replacement values of the various institutions—the best aggregate measure of current disparities—revealed that the physical facilities at the historically white schools were superior to those at the historically black schools with identical "Mission" assignments. For example, the 1985 plant investment value at either Delta State or Mississippi Valley University for Women, the two historically white "regional" schools, exceeded that at either of the two historically black "regional" schools, Alcorn State and Mississippi Valley. U.S. Exh. 836m

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1979-80	1986-87	1979-80	1986-87
Historically White Institutions		Historically Black Institutions	
UM $20,794	$30,757	JSU 18,047	26,669
MSU 21,153	31,957	ASU 16,019	21,291
USM 19,817	31,964	MVSU 15,546	22,746
DSU 17,265	26,213		
MUW 17,836	26,507		

U.S. Exh. 694q (J.A. 372-473).

[15] The 1985 faculty data showed:

	Total	% Full Professors	% Instructors	% With Doctorate
Historically White Institutions				
UM	673	25.9%	24.4%	59.0%
MSU	895	42.8	6.5	70.0
USM	675	26.4	12.9	64.4
DSU	203	32.0	20.7	52.7
MUW	129	35.7	14.0	52.7
Historically Black Institutions				
JSU	359	22.6	16.7	64.9
ASU	174	10.9	43.1	46.6
MVSU	138	18.8	21.7	42.0

See U.S. Exh. 694q (J.A. 380-381). See also Pet. App. 55a n.16.

(J.A. 609); Tr. 412-419 (J.A. 1362-1368). Additionally, the historically white "regional" schools also showed a greater *increase* in plant investment value from 1964 to 1985—reflecting that the gap between the historically white and historically black schools was widening rather than narrowing. U.S. Exh. 836m (J.A. 607).[16]

B. The Legal Proceedings

1. *The United States' Position.* The United States maintained at trial that Mississippi had failed to satisfy its obligation, under the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, to dismantle its racially dual system of higher education. Although the five-week trial (which involved 71 witnesses and 56,700 pages of exhibits) gave rise to numerous disputed issues of fact, the fundamental disagreement between the United States and Mississippi centered on the scope of the State's legal obligation to dismantle its racially segregated system of higher education. Mississippi maintained that it had fulfilled its legal obligations by adopting race-neutral

[16] Current values for plant investment (as measured by the cost of replacing existing facilities) were:

	1964/65	1984/85	Increase 1964/65-1984/85
Historically White Institutions:			
UM	$48,405,525	$199,526,432	$151,120,907
MSU	62,245,953	305,721,970	243,476,017
USM	44,143,743	120,193,938	76,050,195
DSU	11,992,239	63,169,993	51,177,754
MUW	22,434,678	63,485,898	41,051,220
Total	189,222,138	752,098,231	562,876,093
Historically Black Institutions:			
JSU	$12,242,349	$74,315,678	$62,073,329
ASU	10,701,096	49,915,240	39,214,144
MVSU	12,229,539	43,837,040	31,607,501
Total	35,172,984	168,067,958	132,894,974

U.S. Exh. 836m (J.A. 607).

admission, hiring, and resource allocation practices. The United States disagreed with Mississippi's assertion that the State's policies were truly race-neutral. The United States further urged that Mississippi's ultimate obligation under *Brown* is to replace its de jure system of separate "white" and "black" schools with a unitary system of public higher education; accordingly, Mississippi must also eliminate state policies and practices that, when conducted in the aftermath of the past system of de jure segregation, perpetuate the dual system. The United States pointed to such policies and practices in the case, for example, of admission requirements and duplicative program offerings, which acting in combination perpetuated the dual system.

a. *Admission policies.* The United States maintained at trial that Mississippi's admission practices perpetuate a dual system of higher education by continuing and reinforcing the historic distinctions between "white" and "black" schools. The United States pointed, in particular, to Mississippi's use of the American College Test (ACT), a standardized admissions examination. Mississippi employs the ACT in a manner that is expressly contrary to the directions of those who designed the test and that channels black students to the historically black universities.

Mississippi requires all freshman applicants to take the ACT, which consists of a battery of four examinations—in English, mathematics, social studies reading, and natural science reading—that measure the applicant's general educational development on a nationally standardized basis. Pet. App. 129a. The ACT also produces a composite score, which is the average of the four test scores. Bd. Exh. 186, at 4 (J.A. 1209). Basically, at the time of trial, an applicant who received a composite ACT score of 13 or more was eligible for automatic admission to any one of the historically black universities. Pet. App. 128a. A student who sought automatic admission to any one of the historically white schools, however, was re-

quired to achieve a composite ACT score of 15 or more. *Id.* at 127a.[17]

The United States demonstrated at trial that Mississippi's use of composite ACT scores is inconsistent with the directions of the American College Testing Program (ACTP), the private organization that designed and administers the test. The ACTP offers the ACT as one element of a service known as the ACT Assessment, which is designed to present "a comprehensive picture of students." Bd. Exh. 186, at 6-7 (J.A. 1209-1210).[18] The ACTP strongly urges universities to make use of *all* of the information provided in the ACT Assessment—and not rely simply on ACT scores—when making admission decisions. *Ibid.*[19] Indeed, the ACTP has specifically

[17] Mississippi began employing the ACT in its admissions process in February 1961, six days after James Meredith applied for admission to the University of Mississippi. Pet. App. 120a. The district court recognized that Mississippi adopted its 1961 requirement to discourage the admission of blacks to historically white universities. *Id.* at 179a. Although Mississippi's precise use of the ACT has varied over the years, State authorities have consistently required significantly higher ACT scores for admission to the historically white schools than for admission to the historically black schools. See *id.* at 121a-128a.

[18] The ACT Assessment includes not only the applicant's ACT test results, but also the applicant's report of his high school grades and a "profile" section that provides information on the applicant's background, interests, activities, and needs. Bd. Exh. 186, at 1 (J.A. 1210); Bd. Exh. 162, at 2-11 (J.A. 1126-1135). The ACTP makes the ACT Assessment data available to universities in a concise format known as the ACT College Report, which (among other things) predicts an applicant's freshmen year grades based upon his or her individual (not composite) scores and reported high school grades. Pltf. Exh. 292, at 17-27 (J.A. 838-850).

[19] The ACTP has explained:

> Because many factors (e.g., socioeconomic status, differences in educational opportunities, culture, etc.) can potentially affect the test performance of many students who are members of minority groups, ACT believes that assessment for the purpose of college admissions should reflect as complete a picture as possible of students and should include other information in addition to test scores.

Bd. Exh. 186, at 6-7 (J.A. 1209-1210). The ACTP emphasized the following points "in the interpretation and use of ACT Assessment data with minority students" (*ibid.*):

> The ACT Assessment Program presents a comprehensive picture of students. The ACT tests are but one element of a data base that includes information about a student's background, interests, plans, accomplishments, and needs for various types of assistance. * * *
>
> The ACT tests measure academic competencies developed by students through their past educational experiences. The scores should, therefore, be interpreted in view of previous educational opportunities and conditions.
>
> The ACT tests assess a student's current educational development and are not intended to measure either innate aptitudes or the capacity to acquire the academic skills stressed in the tests through subsequent interventions.
>
> ACT data should be used along with other information about students (e.g., personal qualities). The type of additional information that is of value is dependent upon the types of uses being made of the data.

warned that it is particularly important to consider ACT scores in conjunction with other criteria—such as high school grades, special interests, and experiences—when assessing educationally disadvantaged applicants. *Ibid.*; Bd. Exh. 163, at 5 (J.A. 1210-1211); Pltf. Exh. 292, at 4 (J.A. 835-838). Despite the ACTP's specific directions and warnings, and despite the State's long history of denying equal educational opportunities to its black youth, Mississippi has persisted in the use of ACT scores alone, without regard to high school grades or other criteria, to determine automatic admissions.[20]

The United States demonstrated at trial that Mississippi's unconventional use of ACT test scores placed

[20] Beginning in 1986, Mississippi has also required that freshman applicants complete a "core curriculum" of high school classes prior to admission. Pet. App. 125a; Bd. Exh. 183a, at 4-5 (J.A. 1179-1180). An applicant must nevertheless achieve an ACT score of at least 15 to obtain automatic admission to any of the historically white schools, regardless of his grades in those classes.

a substantial obstacle to black applicants who sought admission to the historically white universities.[21] The United States also demonstrated that, while both high school grades alone and ACT test scores alone may be valid predictors of college performance, the best predictor is the use of the two criteria together. Tr. 905-910, 1855-1856, 3776-3777 (J.A. 1529, 1788-1789); U.S. Exh. 56, at 2, 6 (J.A. 175, 177). Furthermore, specific ACT studies of freshmen at Mississippi universities in 1985-86 showed that high school grades alone and high school grades in combination with ACT scores were *better* predictors of first year college grades than were ACT scores alone. Tr. 3753-3756 (J.A. 1779-1782); U.S. Exh. 903, at Table H-1 (J.A. 670). In short, the United States submitted that Mississippi employs ACT scores in a manner that underestimates the academic potential of black students and then effectively relegates those students to the historically black schools, where Mississippi maintains lower admission standards.

b. *Duplication.* The United States also demonstrated at trial that Mississippi's practice of duplicating programs at the historically white and historically black schools continued and reinforced Mississippi's dual system of education. The evidence showed, for example, that

[21] In 1985, 72% of Mississippi's white high school seniors achieved an ACT composite score of 15 or better, while less than 30% of Mississippi's black high school seniors achieved that score. Thus, whites qualified for automatic admission to Mississippi's historically white institutions at nearly two-and-a-half times the rate of blacks. Tr. 1849-1851 (J.A. 1523-1527); U.S. Exhs. 894i, 894j (J.A. 855-864). While the white high school students also had higher average grades than the black students, the difference was not as extreme as the difference in ACT scores. Among Mississippi students in 1985, 43.8% of whites and 30.5% of blacks had a grade point average of at least 3.0, while 62.2% of whites and 49.2% of blacks had at least a 2.5 GPA. Tr. 1851-1854 (J.A. 1524-1526); U.S. Exhs. 894i, 894j (J.A. 1524-1526). The use of high school grades in conjunction with ACT test scores would therefore increase the number of black students eligible for admission to the historically white schools. Tr. 1855 (J.A. 1527).

the historically white institutions unnecessarily duplicated 90% of the master's level programs and 34.6% of the bachelor's level programs offered at the historically black institutions. Pet. App. 144a, 200a. See Tr. 68-102; U.S. Exhs. 479-489, 685a-685g, 685o-685t (J.A. 220-248, 283-310, 318-335).[22] That phenomenon of unnecessary duplication existed whether one compared schools serving the same or different "Missions." For example, the comprehensive (and historically white) universities unnecessarily duplicated more than 30% of the programs at Mississippi's uniquely "urban" (and historically black) Jackson State, including degree programs in Banking and Finance, Social Work, and Law Enforcement. U.S. Exhs. 685b, 685r (J.A. 284-289, 327-329). Likewise, the historically white regional university, Delta State, unnecessarily duplicated 38% of the bachelor's degree programs at the historically black regional university, Mississippi Valley, even though the two schools were a mere 35 miles apart. U.S. Exhs. 685b, 685r (J.A. 290, 330).[23] The United States submitted that Mississippi's unnecessary duplication of programs at historically white and historically black schools served no useful academic function while continuing and reinforcing Mississippi's dual system of higher education.

c. *The Combined Effect of Mississippi's Admission Policies and Duplication.* The United States argued at trial that Mississippi's admission policies and program duplication, as well as other policies and practices, perpetuated a dual system of public higher education. Mis-

[22] "Unnecessary" duplication refers to the duplication of programs that are not considered to be "core" programs essential to a liberal arts education. Pet. App. 143a-144a; Tr. 74-75, 96-97.

[23] The United States also showed that the number of unique programs at Jackson State, when compared to the white comprehensive schools; at Mississippi Valley, when compared to Delta State; and at Alcorn State, when compared to the University of Southern Mississippi, had dropped between 1981 and 1986. U.S. Exhs. 685s, 685t (J.A. 330-335); Tr. 190-192 (J.A. 1326-1330).

sissippi's reliance on ACT scores to determine automatic admission—even though consideration of grades and other criteria would provide more accurate predictions of academic performance—turns black students away from the historically white schools and toward the historically black schools, which have lower ACT requirements. At the same time, Mississippi's duplication of programs among the historically white and historically black schools —which serves no educational function—perpetuates the dual system in a very concrete manner. In combination, the State's actions encourage and reinforce the hallmarks of Mississippi's de jure segregated system: white students and black students engaged in the same course of study in the same locality attend separate schools.

To demonstrate the continuing existence of a dual system of higher education, the United States did not rely solely on the statistical evidence showing, inter alia, that more than 99% of Mississippi's white students attended the historically white universities, and that the combined student enrollment at the historically black universities was more than 94% black. See pp. 10-11, *supra*. The United States also pointed to the testimony of Mississippi's school administrators and expert witnesses, who stated that the historically white and historically black schools continue to have distinct racial identities and missions.

For example, the President of Mississippi Valley, Dr. Boykins, stated that prospective applicants continue to identify Jackson State, Alcorn State, and Mississippi Valley as "black" schools. U.S. Exh. 944c (9/14/79), at 60-63 (J.A. 756). He also acknowledged that prospective white students identified Mississippi Valley as "second class," with the result that white students were reluctant to enroll there. *Ibid.* Dr. Boykins testified that Delta State and Mississippi Valley differed because Mississippi Valley had a mission of enrolling "academically" disadvantaged students—meaning "[p]rimarily" black students. U.S. Exh. 944c (10/4/79), at 127-128 (J.A. 760). Asked to compare perceptions of Delta State and

Mississippi Valley, he said that the former was the "University of the Delta" for white students, while the latter was the "University of the Delta" for black students. *Id.* at 129-130 (J.A. 761).[24]

2. *The District Court Decision.* On December 10, 1987, the district court issued a decision ruling for respondents on all issues and dismissed the case. Pet. App. 104a-201a. The district court recognized that there remained significant differences between the historically white and historically black schools as to admission standards, student and faculty composition, and funding, see, *e.g.*, *id.* at 127a-128a, 133a, 135a-138a, 156a-163a, and that the historically white and historically black universities "duplicate as many as 75% of each other's baccalaureate programs," *id.* at 200a. The district court ruled, however, that the State fully satisfied its affirmative obligation to dismantle its racially dual system by discontinuing official discrimination and adopting "race-neutral policies and procedures." *Id.* at 201a. The court found that the continuing differences among the historically white and historically black institutions "are reasonable and were not motivated by discriminatory purpose." *Ibid.* The court concluded that there accordingly was no denial of equal protection. *Ibid.*

3. *The Court of Appeals' Decisions.* The United States and the private petitioners appealed. A divided panel of the Fifth Circuit reversed and remanded the case for remedial proceedings. Pet. App. 45a-103a. The panel ruled that a State that previously maintained a racially dual system of higher education does not satisfy its obligation to desegregate merely by discontinuing intentional

[24] Similarly, respondents' expert in higher education administration testified that, in addition to its instructional programs, a historically black institution had "a mission in connection with racial identification." Tr. 2991 (J.A. 1658). He said that, while "[a]n effort has to be made" to attract white students, black institutions should remain predominantly black "for the time being" because they provided "a better residential, social, academic atmosphere for many black students than they receive in a predominantly white institution." Tr. 2993 (J.A. 1657).

discrimination. Rather, respondents were required "to eliminate all of the 'vestiges' or effects of de jure segregation, root and branch, in a university setting." Pet. App. 72a. The panel further concluded that respondents had failed to meet that obligation. *Id.* at 94a. Judge Duhé dissented, relying primarily on Justice White's concurring opinion for the Court in *Bazemore* v. *Friday*, 478 U.S. 385 (1986), which held that state officials had adequately disestablished segregation of state-supported 4-H and Homemaker Clubs by allowing "voluntary choice" in attendance (*id.* at 407-408). Judge Duhé reasoned that because university attendance choices are "voluntarily made," the State's duty "to eliminate all vestiges of de jure discrimination 'root and branch' does not reach the university." Pet. App. 102a-103a.

The court of appeals granted a suggestion for rehearing en banc and vacated the panel opinion. Pet. App. 2a. On rehearing, a divided en banc court affirmed the district court, concluding that "Mississippi has adopted and implemented race neutral policies for operating its colleges and universities and that all students have real freedom of choice to attend the college or university they wish." *Id.* at 2a. The en banc court acknowledged that the State was "constitutionally required to eliminate invidious racial distinctions and dismantle its dual system." *Id.* at 13a. In defining that duty in the higher education context, however, the court concluded that it must choose between the principles set forth in Justice White's concurring opinion for the Court in *Bazemore* and those set forth in *Green* v. *County School Bd.*, 391 U.S. 430 (1968). Pet. App. 13a-14a, 20a. The en banc majority determined that *Bazemore*, rather than *Green*, provided the standard for desegregation of public universities, Pet. App. 23a, stating:

> [T]o fulfill its affirmative duty to disestablish its prior system of de jure segregation in higher education, the state of Mississippi satisfies its constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures.

Id. at 26a. The court then concluded that Mississippi had satisfied that standard in this case. See *id.* at 26a-37a.

Judge Goldberg, joined by Judges Politz, King, and Johnson, dissented, endorsing the panel majority's opinion. Pet. App. 37a-38a. Judge Higginbotham concurred in part and dissented in part. *Id.* at 38a-44a. He would have affirmed the district court's judgment that Mississippi had ceased its intentional discrimination against blacks in higher education. *Id.* at 38a n.*. He concluded, however, that the district court erred in holding that the State's "obligation ended when it adopted an open admissions policy and stopped purposeful racial discrimination." *Id.* at 38a-39a. Instead, Mississippi remains under an obligation to dismantle its racially dual educational system, and it therefore must also discontinue practices that "directly reinforce the historical traces of separate post-secondary educational paths for blacks and whites" and that lack a legitimate educational justification. *Id.* at 42a.

SUMMARY OF ARGUMENT

This Court declared in *Brown* v. *Board of Education*, 347 U.S. 483, 495 (1954), that "in the field of public education the doctrine of 'separate but equal' has no place." That declaration applies to *all* systems of public schools, regardless of whether the system provides primary, secondary, or higher education. Thus, as the court of appeals recognized, the State of Mississippi is under a constitutional obligation "to eliminate invidious racial distinctions and dismantle its dual system." Pet. App. 13a.

The court of appeals erred in concluding that the State of Mississippi satisfies that obligation by simply ending intentional discrimination and adopting race-neutral pol-

icies and procedures. As in the case of primary and secondary education, the State must also eradicate, to the extent practicable, the remnants of unlawful discrimination. *Board of Education* v. *Dowell*, 111 S. Ct. 630, 638 (1991). The court of appeals correctly recognized that higher education differs from primary and secondary education in a fundamentally important respect—the decisions whether and where to attend college are largely matters of individual choice. That distinction, however, does not mean that the remnants of a dual system may be disregarded. Rather, the State's obligation to eliminate the remnants of unlawful discrimination must necessarily focus on the elimination of those remnants of the former dual system that affect free choice. *Bazemore* v. *Friday*, 478 U.S. 385, 387-388, 407-409 (1986).

A State fulfills its obligation to dismantle its dual system of higher education when a graduating high school senior's choice of which college to attend is "wholly voluntary and unfettered" by state action based on race. *Bazemore*, 478 U.S. at 407. As this Court recognized in *Green* v. *County School Bd.*, 391 U.S. 430 (1968), however, simply saying that free choice exists does not necessarily make it so. Accordingly, the mere adoption of race-neutral policies and practices does not suffice to dismantle a dual system of higher education. The State, in addition, must eliminate those continuing elements of its former dual system that perpetuate segregation by fettering choice, that do not serve legitimate educational interests, and that can be practicably eliminated.

We submit that the State of Mississippi has failed to discharge that obligation. In particular, the State continues to employ the ACT, a standardized admissions test, in a manner that underestimates the academic potential of black students, even though the use of other readily available admission criteria would provide a more accurate indicator of academic performance. In addition, the

State continues to duplicate academic programs at the historically white and historically black colleges—effectively endorsing and encouraging continued segregation—even though, as the district court recognized, principles of sound administration would dictate the elimination of the unnecessary duplication. The lower courts' exclusive focus on whether the State has eliminated intentional discrimination has prevented any inquiry into whether those continuing elements of Mississippi's former dual system should be cured.

ARGUMENT

MISSISSIPPI HAS FAILED TO SATISFY ITS OBLIGATION TO DISMANTLE ITS RACIALLY DUAL SYSTEM OF HIGHER EDUCATION

A. The Equal Protection Clause of the Fourteenth Amendment Requires the States To Dismantle All Racially Dual Systems of Public Education

1. This Court declared nearly 40 years ago that the Equal Protection Clause prohibits racially dual systems of public education. Simply put, "in the field of public education the doctrine of 'separate but equal' has no place." *Brown* v. *Board of Education*, 347 U.S. 483, 495 (1954). The Court accordingly directed that those States that had established segregated educational systems were under a constitutional obligation to effect "the transition to a system of public education freed of racial discrimination." *Brown* v. *Board of Education*, 349 U.S. 294, 299 (1955) (*Brown II*). The Court recognized that school authorities have the "primary responsibility for elucidating, assessing, and solving" the problems associated with dismantlement of the dual systems, while the courts "consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles." *Ibid.*

This Court's declaration in *Brown* that "the doctrine of 'separate but equal' has no place" in public education

applies to *all* dual systems of public schooling, regardless of whether the system provides primary, secondary, or higher education. Both the language and logic of *Brown* indicate as much.[25] Thus, the court of appeals properly recognized that a State, such as Mississippi, that has "operated a racially dual system of public higher education" is under a constitutional obligation "to eliminate invidious racial distinctions and dismantle its dual system." Pet. App. 13a.[26]

2. This Court has also set forth a general standard for determining whether a formerly dual system of public education has achieved "unitary" status. The Court has explained that a State's dismantlement of a segregated system of public education is complete when the State has terminated its policy of intentional discrimination, adopted race-neutral policies and practices, and eradi-

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[25] For example, the *Brown* opinion specifically includes legal and graduate level training within its description of "public education." 347 U.S. at 491-492, 493. Thus, shortly after the *Brown* decision, the Court observed that "there is no reason for delay" in implementing *Brown*'s mandate in graduate professional schools. *Florida ex rel. Hawkins* v. *Board of Control*, 350 U.S. 413, 414 (1956) (per curiam). Moreover, higher education serves many of the same important roles as primary and secondary education in preparing an individual for responsible citizenship, awakening cultural values, and providing full opportunities for participation in a democratic society. See *Brown*, 347 U.S. at 493-495. Racial segregation is no less injurious to those roles in the higher educational context. See, *e.g.*, *Sweatt* v. *Painter*, 339 U.S. 629, 634 (1950); *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637, 641 (1950).

[26] See also, *e.g.*, *Geier* v. *Alexander*, 801 F.2d 799, 800 (6th Cir. 1986); *Geier* v. *University of Tennessee*, 597 F.2d 1056, 1065 (6th Cir.), cert. denied, 444 U.S. 886 (1979); *Lee* v. *Macon County Bd. of Educ.*, 453 F.2d 524, 527 (5th Cir. 1971); *Norris* v. *State Council of Higher Educ.*, 327 F. Supp. 1368, 1373 (E.D. Va.) (three-judge court), aff'd *sub nom. Board of Visitors of the College of William & Mary* v. *Norris*, 404 U.S. 907 (1971); *Alabama State Teachers Ass'n* v. *Alabama Pub. School & College Auth.*, 289 F. Supp. 784, 787 (M.D. Ala. 1968), aff'd per curiam, 393 U.S. 400 (1969); *Sanders* v. *Ellington*, 288 F. Supp. 937, 942 (M.D. Tenn. 1968).

cated, to the extent practicable, the remnants of unlawful discrimination. See *Board of Education* v. *Dowell*, 111 S. Ct. 630, 638 (1991).[27]

The en banc court of appeals refused to apply that standard to racially dual systems of higher education, concluding that a "different standard" should be employed in that context. Pet. App. 14a. Under that court's standard, a State should be deemed to have satisfied its constitutional obligation by "discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures." *Id.* at 26a. In short, the State need not address any remnants of past discrimination. The en banc court based its decision on a determination that universities "differ in character fundamentally from primary and secondary schools." *Id.* at 23a.[28] It concluded that this Court's decision in *Bazemore* v. *Friday*, 478 U.S. 385 (1986), compelled its application of the "different standard." See Pet. App. 23a-24a, 25a-26a.

In our view, the same basic standard for assessing whether a State has dismantled a racially dual public school system applies regardless of whether the system involves primary, secondary, or higher education. In each of these contexts, a court must consider not only

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[27] As we explained in our amicus curiae brief in *Freeman* v. *Pitts*, No. 89-1290 (at 13-14), what courts have termed the "vestiges" of a racially dual system are best understood as "remnants," in the sense that they were a discriminatory part of the dual system and were not simply caused by it. We therefore use the term "remnants" rather than "vestiges" in this brief.

[28] Specifically, it observed that university attendance is not mandatory, that students exercise choice in determining which university to attend, and that universities frequently exhibit diversity in institutional character and program offerings. Pet. App. 23a-25a. It concluded that a requirement that States eliminate the remnants of a segregated system would interfere with those characteristics and subject the "aspiring student" to a "severe disservice by remedies which, in seeking to maximize integration, minimize diversity and vitiate his choices," *Id.* at 25a.

whether the State has stopped intentional discrimination and adopted race-neutral policies, but also whether the State has eliminated—to the extent practicable—the remnants of its prior unlawful discrimination. This is not to say that differences in the contexts are not pertinent in assessing what constitutes a remnant of discrimination the State must cure; they are, in significant respects. But the proper inquiry is advanced by a focus on what is or is not a remnant of the prior system with continuing discriminatory effect in the higher education context, rather than on formulating a new legal standard.

The fact that this case concerns discrimination in the higher education context *does* affect what the State must do to dismantle its dual system. The central vice of the "separate but equal" primary and secondary systems struck down in *Brown* was the *assignment* of students to particular schools on the basis of race. *Brown*, 347 U.S. at 493. At the college level, however, graduating high school students are not typically assigned by the State to a particular college or university; the decision whether to attend college, and which college to attend, has historically been in this country a matter of individual *choice* rather than state direction. The central vice of the dual system of higher education previously maintained by Mississippi was that it fettered this choice on the basis of race. The pertinent question in assessing Mississippi's obligation to dismantle its dual system, then, is whether state action continues to fetter on the basis of race a graduating high school student's choice of which public college to attend. See *Dowell*, 111 S. Ct. at 637 ("[F]ederal-court decrees must directly address and relate to the constitutional violation itself.") (quotation omitted); *Milliken* v. *Bradley*, 418 U.S. 717, 757 (1974) (Stewart, J., concurring) (the "task * * * is 'to correct . . . the condition that offends the Constitution' ").

This Court's decision in *Bazemore* v. *Friday*, *supra*, confirms that in a regime in which the vice to be remedied is state interference with individual choice on the basis

of race, a State fulfills its constitutional obligation by taking the necessary affirmative steps to ensure that an individual's choice is "wholly voluntary and unfettered." 478 U.S. at 407. *Bazemore* presented the question whether North Carolina State University's Extension Service, which provided agricultural and other information to the public, violated the Equal Protection Clause when providing financial and operational assistance to voluntarily established, community-based 4-H and Homemaker Clubs. The record showed that prior to 1965, the Extension Service supported those clubs on a segregated basis, but since that time had discontinued its segregated club policy and required that membership in all then-existing or newly organized clubs be open to all participants regardless of race. 478 U.S. at 407. The plaintiffs' claim was founded solely on the continuing existence of numerous "all-white" and "all-black" clubs.[29] This Court concluded that "this case presents no current violation of the Fourteenth Amendment since the Service has discontinued its prior discriminatory practices and has adopted a wholly neutral admissions policy." *Id.* at 408.

The Court also determined that its decision in *Green* v. *County School Bd.*, 391 U.S. 430 (1968)—holding that a "voluntary choice program" was ineffective to dismantle the racially dual primary and secondary school system involved in that case—"has no application to the voluntary associations supported by the Extension Service." 478 U.S. at 408. The Court noted that "[w]hile school children must go to school, there is no compulsion to join 4-H or Homemaker Clubs" and that "school boards customarily have the power to create school attendance areas and otherwise designate the school that particular students may attend * * *." *Ibid.* The Court agreed with the United States that "however sound *Green* may have been in the context of the public schools, it has no application to this wholly different milieu." *Ibid.*

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[29] The district court found "no evidence to show that the quality of [the State's] services is any different for the clubs of one race than for the other." *Bazemore* Pet. App. 165a n.50.

The private petitioners argued below that *Bazemore* has no applicability in the context of public higher education, and that the State's obligation should instead be measured against the standards set forth in *Green*. The en banc court of appeals, on the other hand, held that *Bazemore* applied and meant that the State need not address possible remnants of prior discrimination, but instead need only discontinue intentional discrimination and adopt race-neutral policies and procedures to fulfill its constitutional obligation.

In our view, both of these positions are flawed. This Court's decision in *Bazemore* was not like "a restricted railroad ticket, good for this day and train only." *Smith* v. *Allwright*, 321 U.S. 649, 669 (1944) (Roberts, J., dissenting). The equal protection principles announced in that case are fully applicable in the context of public higher education; those principles confirm that the proper focus is on whether the State interferes with choice on the basis of race. At the same time, a State can interfere with choice on the basis of race by indirect as well as direct means, and nothing in *Bazemore* suggests that a State is relieved of its obligation to cure any remnants of prior de jure segregation that continue to fetter choice on the basis of race.

In short, *Bazemore* teaches that a State fulfills its obligation to dismantle its dual system of higher education when a graduating high school senior's choice of which public college to attend is "wholly voluntary and unfettered" by state action based on race. 478 U.S. at 407. That is because a system of higher education, like the 4-H Clubs at issue in *Bazemore*, is a regime in which individual choice is the key factor. *Green*, however, teaches that saying so does not make it so, and that the remnants of prior illegal conduct can fetter choice and render a facially neutral plan discriminatory in operation. Collectively, *Bazemore* and *Green* teach that, in the context of higher education, a State's adoption of a "freedom of choice" admission policy to desegregate a racially

dual university system "merely begins, not ends, [the] inquiry whether the Board has taken steps adequate to abolish its dual, segregated system." *Green*, 391 U.S. at 437. Specifically, a State also must ensure that it has eliminated, to the extent practicable, remnants of the dual system that may fetter free choice. *Dowell*, 111 S. Ct. at 638.[30]

3. In the higher education context, then, the focus remains on free choice. As *Bazemore* makes clear, in such a context the mere continued existence of single-race institutions "does not make out a constitutional violation," and there is no obligation on the State to "take affirmative action to integrate their student bodies." 478 U.S. at 408. What the State must do is take affirmative action to remove any remnants of the prior dual system that affect choice. A remnant is a part of a formerly dual system that has had and continues to have a discriminatory

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[30] As we explained in our brief in *Bazemore*:

> This is not to say that a voluntary attendance system is unitary with respect to admissions because the state entity simply announces that it will henceforth conduct admissions without regard to race. Rather, such a formerly segregated government program is unitary only if the state has, in fact, established an admissions "system in which racial discrimination [is] eliminated root and branch." *Green*, 391 U.S. at 438. Thus, the relevant program must be free from all practices that either indicate that the program is not genuinely open to all free from subtle discrimination or that otherwise create further racial separation.
>
> This transition will normally involve diligent oversight and remedial efforts to ensure that the defendant's existing administrative and admissions practices are not tainted by discrimination, and do not send a subtle discriminatory message, that its personnel are sensitized to the need to treat applicants and potential applicants in a wholly nondiscriminatory manner, that its present and future practices do not have the effect of impeding desegregation, and that it is made clear to all that any practices discouraging or diminishing racial mixing are truly a thing of the past.

U.S. Br. 43.

is met once all students have the same right to decide where to attend school, with no discriminatory prompting from the State. Once choice is free, there will be no other remnants of the dual system, for there will no longer be a state-mandated dual system.

B. The District Court Erred by Failing To Consider the Evidence That Mississippi Has Not Eliminated Readily Eradicable Remnants of Past Discrimination That Continue To Fetter Free Choice

The United States submitted evidence at trial showing that Mississippi has not satisfied its constitutional obligation to dismantle its dual system, because remnants of that system that could practicably be eradicated continue to fetter free choice on the basis of race. Specifically, the State's use of ACT test scores to determine admission to particular schools, and its perpetuation of the dual system by pointlessly duplicative programs at historically black and historically white colleges, combine to make race a factor in a graduating senior's decision of which public college to attend. The district court erred in failing to consider this evidence.

1. The district court failed to analyze properly the significance of Mississippi's use of the ACT. The court correctly recognized that Mississippi began using the ACT in 1961 specifically because it was an effective tool for excluding blacks from the historically white universities. See Pet. App. 179a; see also *id.* at 32a. The court concluded, however, that the circumstances surrounding Mississippi's subsequent imposition of minimum ACT score requirements "do not indicate that this policy was adopted for discriminatory purposes." *Id.* at 179a. The court concluded that Mississippi was entitled to rely on ACT scores alone in determining automatic admissions because the ACT score by itself is "a valid indicator" of college performance and the Board of Trustees was "concerned about grade inflation and the lack of comparability in grading practices and course offerings among Mississippi's

diverse high schools." *Id.* at 180a. If the district court had employed the correct standard, it would have inquired whether Mississippi's use of the ACT alone was an element of the State's historically dual system, whether it perpetuates segregation, whether it nevertheless serves legitimate educational objectives, and whether it could readily be eliminated. The evidence supports the United States' case as to each of those inquiries.

First, there is no serious question that determination of automatic admissions through exclusive reliance on ACT scores—without regard to other valid indicia of academic potential—is a remnant of Mississippi's racially dual system. The historically white universities adopted minimum ACT score requirements in 1963 in direct response to James Meredith's application for admission to the University of Mississippi. See Pet. App. 120a-121a.[33] The district court observed that the Board of Trustees did not adopt State-wide minimum test score requirements until 1976. Pet. App. 179a. The Board's 1976 policy, however, only formalized at the State level the discriminatory standard that the historically white universities had set more than ten years before.

Second, the State's admissions policy *continues* to steer black students away from historically white schools. The district court acknowledged that "[b]lack students on the average score somewhat lower" than white students. Pet. App. 130a, 181a-182a. Indeed, in 1985, more than 70% of all white Mississippi students—but less than 30%

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[33] Six months after James Meredith had applied for admission, the Board of Trustees authorized each university "to set a minimum score which applicants to such institution must each make on the [ACT] in order to be eligible for consideration for admission." Pet. App. 120a. The three largest white universities promptly adopted policies requiring applicants to achieve a minimum composite ACT score of 15. *Id.* at 121a. When asked about the adoption of this requirement at his university, the Vice President of Mississippi State stated that the cutoff was "drawn out of the air in the Meredith days. Don't get me off on that either because I'm liable to tell secrets." U.S. Exh. 949, at 50-51 (J.A. 776).

of all black Mississippi students—who took the ACT received a score of 15 or higher. See note 21, *supra*.[34]

Third, Mississippi's exclusive reliance on ACT scores lacks a legitimate educational justification. That practice cannot be defended on the theory that grades are unreliable indicators of academic performance because—as the ACT's designers stress and studies in Mississippi demonstrate—the use of grades in conjunction with ACT scores provides more accurate predictions of college performance. See pp. 17-18, *supra*. There is simply no logical justification for relying on a single criterion that underestimates the potential performance of black applicants when the addition of other readily available criteria would lead to more accurate results. It is no answer that "use of the ACT test score alone was also

[34] The district court observed that most black applicants who actually applied for admission to the historically white universities were ultimately admitted. Pet. App. 131a, 184a. That fact, however, does not dispel the segregative character of the ACT requirement. See *Dothard* v. *Rawlinson*, 433 U.S. 321, 330 (1977) ("The application process itself might not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory.").

Nor does Mississippi's "high risk" admissions program cure the segregative effect of using ACT scores alone to determine automatic admissions. The historically white schools allow up to 5% of the previous year's freshman class or 50 students (whichever is greater) to be admitted with composite ACT scores of less than 15 as "high risk" exceptions to the general admissions program. A State, however, cannot validate the remnants of past discrimination by providing limited exceptions that simply lessen their segregative impact. Finally, it is also no answer to observe that any black student who is denied admission to a historically white school as a freshman can transfer into that school after having taken 24 hours of instruction at a junior college, provided the student has maintained a C average or better. Pet. App. 8a, 32a-33a. A qualified black applicant whose admission is delayed as a result of unfair admission criteria is permanently deprived of the opportunity to pursue his education on an equal footing with similarly qualified white applicants.

a valid indicator." Pet. App. 180a. Mississippi's reliance on ACT scores alone is irrational because the State refuses to consider information that would provide a *better* indication of college performance. Instead, Mississippi adheres to a practice that it initially adopted for racially discriminatory purposes and that continues to have an unfair and racially discriminatory effect.

Fourth, there is no impediment to considering grades and other criteria in the admissions process. Most other States use high school grades and other criteria in conjunction with ACT scores to determine college admissions. Moreover, the ACTP provides such information—together with a prediction of college grades—in its ACT Assessment. See pp. 16-17, *supra*. Hence, Mississippi could remove this remnant of its dual system—and improve the accuracy of its predictions of college performance—without significant difficulty.

2. The district court also failed to analyze properly the significance of Mississippi's unnecessary duplication of programs at the historically white and historically black universities. The district court did not dispute that the historically white schools unnecessarily duplicate the programs at the historically black schools.[35] But the court concluded that program duplication was irrelevant because "this case * * * is about the charge of racial discrimination, in higher education," Pet. App. 146a, and specifically "whether any practices or policies of the State in the higher education field are racially motivated to bring about results which deprive black citizens of benefits provided to white citizens." *Id.* at 200a. Here as well, the district court should have inquired whether unnecessary program duplication was an element of Mis-

[35] The district court observed that at the time of trial, the historically white and historically black universities "duplicate as many as 75% of each other's baccalaureate programs." Pet. App. 200a. As we have explained (pp. 18-19, *supra*), the district court specifically found extensive—and concededly unnecessary—program duplication at historically white and historically black schools.

sissippi's historically dual system, whether it perpetuates segregation, whether it nevertheless serves legitimate educational objectives, and whether it could readily be eliminated. The evidence supports the United States' case as to each of those inquiries.

First, Mississippi's unnecessary duplication of programs at the historically white and historically black universities was plainly a central element of Mississippi's racially segregated system of higher education. Indeed, the notion of "separate but equal" universities rests on the establishment of duplicative educational programs for white and black students. See, *e.g.*, *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337, 344-345 (1938). Mississippi instituted program duplication at its white and black universities expressly to achieve "separate but equal" status, and it ultimately produced duplicative educational programs for white and black students that were both "separate and unequal." Pet. App. 114a.

Second, the maintenance of duplicative programs at the historically white and the historically black schools directly affects student choice in a way that perpetuates segregation. The State's retention of an academic program at a historically white university and a duplicative program at a nearby black university perpetuates, before the eyes of the community, the dual system that the State is supposed to be abolishing.[36] A State that engages in

[36] Likewise, the State's maintenance of similar curricula at the two land-grant universities—Mississippi State and Alcorn State—represents an extraordinary duplication of programs for a relatively small State with limited financial resources. See, *e.g.*, U.S. Exhs. 685b, 685c (J.A. 293-294, 296). Similarly, testimony at trial tended to show that the State constructed degree-granting "centers," led by the University Center in Jackson, which either duplicated programs at historically black institutions or prevented new or enhanced programs from being placed at the historically black institutions. See note 5, *supra*.

program duplication at historically black and historically white colleges serving no useful educational purpose effectively endorses and encourages continued segregation. See *Keyes* v. *School Dist. No. 1*, 413 U.S. 189, 196 (1973) (noting that "community and administration attitudes toward the school" are relevant in determining whether a dual system has been dismantled). The State's message that there are schools for whites and schools for blacks will affect student choice.

That effect is exacerbated in this case by the State's admission policies. An applicant who receives an ACT score of 15—and thereby qualifies for admission to both the historically white schools and the historically black schools—is given the choice between enrolling in a historically white school, with its more attractive program, or at a nearby historically black school, with its less attractive, duplicative program. Plainly, the rational choice under those circumstances is to enroll in the program with superior faculty, facilities, and resources.[37] Mississippi's use of ACT scores, however, gives white applicants an advantage over black applicants in qualifying for admission to both schools. Thus, Mississippi's program duplication encourages white students preferentially to enroll at the historically white schools, while giving the black student who is prejudiced by Mississippi's admission standards no choice but to enroll at an historically black school. Consequently, Mississippi's retention of duplicative programs, operating in tandem with Mississippi's skewed admission policies, perpetuates Mississippi's historic system of "separate and unequal schools." See pp. 19-20, *supra*. Indeed, as discussed *supra* at pp. 20-21,

[37] As the district court noted, a Carnegie Foundation study found that "62% of the students surveyed stated that facilities were the most important factor in their interest in an institution." Pet. App. 165a.

state officials frankly acknowledged the racial identity they thought the schools had and *should* have.[38]

Third, the court acknowledged that Mississippi's program duplication serves no useful educational purpose. The court specifically found, "[f]or example, the unnecessary duplication of programs and administrations by two noncomprehensive universities, Delta State and Mississippi Valley State, only 35 miles apart in the rural, financially strapped Mississippi Delta, cannot be justified economically or in terms of providing quality education." Pet. App. 145a-146a. See also *id.* at 200a. The court nevertheless concluded that the fact that program duplication served no legitimate educational interests was irrelevant because "this case is not about the efficiency or the economic wisdom of higher education policies." *Id.* at 146a. See also *id.* at 200a.

Fourth, Mississippi could readily eliminate program duplication—and its segregative effects—by the simple measure of consolidating the duplicative programs in a manner that eliminates those effects. See *Green*, 391 U.S. at 442 n.6. We do not urge, as the en banc court suggested, that the State must establish a regime where the historically white and historically black schools "remain equal in funding, offerings and facilities." Pet. App. 37a. Indeed, that approach would have the pernicious effect of maintaining a "separate but equal" regime. We urge instead that Mississippi can eliminate program duplica-

[38] Thus, the district court's blanket conclusion that "there is no proof that unnecessary program duplication is directly associated with the racial identifiability of institutions," Pet. App. 194a, misstates the record. Indeed, there is no question that program duplication plays a major role in maintaining racial identities. As the district court recognized, Mississippi very effectively employed duplicative programs at the historically white off-campus centers during the 1960s to maintain the racial identifiability of its historically white and black universities. See pp. 4-5, *supra*. Mississippi's successful use of duplicative programs to maintain racial identifiability demonstrates, at a minimum, that duplicative programs have that effect.

tion by the cost-effective technique of modifying and consolidating programs that persist *despite* their "inefficiencies and wastefulness." Pet. App. 200a. Indeed, one would expect that principles of sound administration alone would lead to that result.[39]

3. We agree with Judge Higginbotham that the problem here is that the en banc court has affirmed "the district court's answer to the wrong question." Pet. App. 39a. If the court had looked beyond racial motivation, *id.* at 37a, it would have discovered that Mississippi has failed to fulfill its constitutional duty to eliminate to the extent practicable discriminatory remnants of its racially dual educational system that continue to have a segregative effect. *Dowell*, 111 S. Ct. at 638. The United States and the private petitioners are entitled to have the evidence evaluated under the correct legal standard. See *Inwood Laboratories* v. *Ives Laboratories*, 456 U.S. 844, 855 n.15 (1982); *United States* v. *Singer Manufacturing Co.*, 374 U.S. 174, 193 (1963). We accordingly submit that the judgment of the en banc court should be reversed and the case remanded for further proceedings. See Pet. App. 39a (Higginbotham, J., concurring).

[39] It may be objected that any continued disparity in facilities, funding, and program offerings between historically white and historically black colleges will affect choice, just as duplication will. See pp. 32-34, *supra*. But duplication pushes whites to attend historically white schools *and* pushes blacks to attend historically black schools; it is, therefore, segregative in effect. Disparities, on the other hand, while they may encourage whites to attend historically white colleges and to avoid attending historically black colleges, will have precisely the same—and not a mirror—effect on black students. Disparities, therefore, are not segregative in effect, and certainly will not have any such discriminatory effect on choice if the ACT and duplication remnants are properly addressed.

C. Mississippi Has Also Failed To Satisfy Its Identical Obligation, Under Title VI of the Civil Rights Act of 1964, To Dismantle Its Racially Dual System of Higher Education

The court of appeals also erred in concluding that respondents had not violated Title VI of the Civil Rights Act of 1964. See Pet. App. 26a n.11. Mississippi's obligation to dismantle its racially dual system of higher education is the same under both Title VI and the Equal Protection Clause.[40] The State must take affirmative steps to remove the remnants of its racially dual system of education. This interpretation of Title VI is reflected in the Department of Education's relevant Title VI regulation, which provides:

> In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipients must take affirmative action to overcome the effects of prior discrimination.

34 C.F.R. 100.3(b)(6)(i).

Bazemore construed a similar regulation of the Department of Agriculture, as it was applied to the 4-H Clubs at issue in that case. 478 U.S. at 408-409. The Court agreed with the United States that the Extension Service had fully complied with the regulation by "tak[ing] affirmative action to change its policy and to establish what is concededly a nondiscriminatory admissions system." *Id.* at 409. And, as we explain above, while the adoption of a nondiscriminatory admissions policy is sufficient to "overcome the effects of prior discrimination" in the context of 4-H Clubs, more may be

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[40] See *Regents of the University of California* v. *Bakke*, 438 U.S. 265, 287 (1978) (opinion of Powell, J.); *id.* at 328 (opinion of Brennan, White, Marshall, Blackmun, JJ.); see also *Guardians Ass'n* v. *Civil Service Comm'n*, 463 U.S. 582, 610-611 (1983) (opinion of Powell, J.); *id.* at 612-613 (opinion of O'Connor, J.); *id.* at 639-643 (opinion of Stevens, J.).

required to eliminate the remnants of a past dual system of higher education so that state action will not continue to fetter choice on the basis of race.[41]

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

ROGER CLEGG
BARBARA S. DRAKE
Deputy Assistant Attorneys General

JEFFREY P. MINEAR
Assistant to the Solicitor General

JULY 1991

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[41] In 1978, the Department of Health, Education, and Welfare (predecessor to the Department of Education) issued Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education. 43 Fed. Reg. 6658. Those Criteria, which remain in effect, were issued to assist six States—Arkansas, Florida, Georgia, North Carolina, Oklahoma, and Virginia—in the preparation of desegregation plans as part of the process of securing voluntary compliance with Title VI. 43 Fed. Reg. 6658. The Criteria are not directly applicable to Mississippi; however, they make it clear that States that have operated dual systems of higher education must do more than simply adopt nondiscriminatory policies; they must take affirmative steps to remove the remnants of past segregation. *Id.* at 6659-6660.

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Nos. 90-1263, 90-6588

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In The

Supreme Court of the United States

October Term, 1991

UNITED STATES OF AMERICA,

Petitioner,

vs.

RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.,

Respondents.

JAKE AYERS, JR., ET AL.,

Petitioners,

vs.

RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR RESPONDENTS

MIKE MOORE
Attorney General
State of Mississippi
P. O. Box 220
Jackson, Mississippi 39205

WILLIAM F. GOODMAN, JR.
(Counsel of Record)
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Special Assistant Attorneys General
P.O. Box 650
Jackson, Mississippi 39205
(601) 948-6470

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. The private petitioners' question concerning the scope of the legal duty to disestablish should be more precisely stated under the court of appeals' opinion as follows:

> Whether Mississippi's affirmative duty to disestablish its prior system of de jure segregation in higher education extends beyond discontinuing prior discriminatory practices and adopting and implementing for years good-faith, race-neutral policies and procedures which afford all students real freedom of choice.

2. The private petitioners' question concerning the applicability of Title VI regulation 34 C.F.R. § 100.3(b)(6)(i) should be more precisely stated on this record as follows:

> Whether Title VI and 34 C.F.R. § 100.3(b)(6)(i) impose on Mississippi an affirmative duty to disestablish its prior system of de jure segregation in higher education beyond the adoption and years of implementation of genuine nondiscriminatory policies coupled with substantial affirmative efforts to promote desegregation which afford all students real freedom of choice.

3. The United States' question misconstrues the court of appeals' opinion. The proper question is as follows:

> Whether the district court's finding that the continued racial identifiability of Mississippi universities persists today as the result of free and unfettered choice of students and personnel and despite the State's substantial affirmative good-faith efforts in "other-race" recruitment and resource allocation is clearly erroneous.

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Nos. 90-1205, 90-6588

In The

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On Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR RESPONDENTS

The State of Mississippi respondents[1] submit this consolidated response to the briefs separately filed by the

[1] Respondents are the Governor, the Commissioner of Higher Education, the Board of Trustees of State Institutions of

(Continued on following page)

private petitioner class of black citizens and the United States.

STATEMENT OF THE CASE

The State of Mississippi admittedly maintained a segregated system of higher education through at least 1962. The Board of Trustees and the universities subsequently implemented, however, nonracial admissions and employment practices. Moreover, by the mid-1970's State policies clearly extended beyond the genuine operation of the universities without regard to race. The Board affirmatively acted to send the unmistakable message that discriminatory practices were affairs of the past. Since that time the State has faithfully implemented nonracial practices coupled with good faith affirmative efforts to encourage further desegregation.

The petitioners' statements of the case unduly emphasize historical acts of state-imposed segregation of a long since concluded discriminatory era. While predominantly black and, to a lesser extent, predominantly white universities do remain, the record, district court opinion and court of appeals opinion preclude any notion of mechanical equation of Mississippi's system today

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Higher Learning, the individual members of the Board of Trustees, Delta State University, Mississippi State University, Mississippi University for Women, the University of Mississippi, the University of Southern Mississippi, and the chief administrative officer of each of these five universities. Unless the context otherwise requires, references in this brief to "the State" include all respondents. References to "the Board" address the Board of Trustees of State Institutions of Higher Learning.

with its distant unconstitutional past. The petitioners' statements are incomplete; they do not portray fairly the record as a whole or the lower courts' extensive findings. Consequently, extensive supplementation is required.

1. *The Parties' Contentions at Trial.* Petitioners advanced their claims for "disestablishment" on two largely conflicting fronts. First, they asserted the State unlawfully "discriminated" against the predominantly black universities in the allocation of resources. (Amended Complaint, R. 40-41, ¶¶ 3(b), (c), (d); Complaint in Intervention, R. 94, ¶ 16) Petitioners urged substantial institutional enhancement because of the predominant presence of blacks at these institutions. Indeed, private petitioners specifically sought the "equalization" of resources between the predominantly black and predominantly white universities. (Amended Complaint, R. 77-78, Prayer for Relief, ¶ A(2)) Second, petitioners demanded a greater black presence at the predominantly white universities. Yet petitioners advanced no contentions specifying the alleged degree of racial balance required or what efforts or results would allegedly be enough to constitute "disestablishment."[2]

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[2] Thus, petitioners' proof overwhelmingly consisted of quantitative institutional comparisons according to predominant racial presence. Purported funding, program, facilities and land grant analyses were driven by race with virtually no consideration of normative educational criteria. The United States refused to submit a single government representative for deposition on any issue. (Notice of 30(b)(6) Deposition, R. 1162-63; Motion for Protective Order, R. 1168-70) No spokesman for the Department of Education testified at any time.

(Continued on following page)

Mississippi's defenses were primarily represented in two ultimate alternative contentions: (i) the State has fulfilled its duty to disestablish state-imposed segregation by implementing and maintaining good faith, nondiscriminatory and nonracial admissions and operational policies with respect to students, faculty and staff; and alternatively (ii) given the nondiscriminatory policies, the State in any event has fulfilled its duty through its affirmative good faith efforts to attract qualified black students and personnel to predominantly white universities and qualified white students and personnel to predominantly black universities. Given the existence of such genuine policies, the State maintained that the mere continued existence of predominantly black and predominantly white universities is not unlawful considering individual freedom of choice and the varying objectives and advantages of such institutions. (Pretrial Order, R. 1376, Exh. F Def. Statement of Contested Issues of Law)

Hence, the State's proof delineated the substantial efforts expended to further desegregation to the point of establishing the virtual exhaustion of feasible student, faculty and staff recruitment procedures. Board witnesses

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The United States even declined to involve the United States Department of Agriculture which established and administered many of the land grant policies challenged. Petitioners simply ignored the State's substantial efforts to increase the presence of other-race students, faculty and staff. To be sure, petitioners' standardized testing witness criticized the State's use of the American College Test (ACT), but he also declined to address the determinative issue of an appropriate admissions standard.

focused upon the legitimate educational criteria adhered to in admission, employment and resource allocation practices. The State proved the admission policies are not the cause of any institutional racial identifiability. The State demonstrated the absence of any racial pattern in the provision of resources. The record as a whole thereby reflects a system genuinely untainted by discriminatory actions, purposes, or effects.

2. *The Factual Record.* HEW's Office of Civil Rights contacted the Board in 1969 and the early 1970's in conjunction with OCR's ongoing review of state systems of higher education once segregated by law. The Board advised OCR that the Mississippi system already complied with all legal requisites. Nevertheless the Board indicated the State would take further affirmative steps to enhance desegregation. (Exh. Bd-001, J.A. 898) The Board and OCR could not agree, however, regarding an acceptable statewide approach to promotion of further desegregation.[3] The absence of an agreement with OCR notwithstanding, the Board elected to implement a formal plan to foster desegregation which became known as the

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[3] A major sticking point was the absence of a comprehensive approach to desegregation of the junior (community) college system. The state-supported establishment for higher education includes 15 junior colleges and 8 universities. It is not, however, a single system. Each junior college has its own local governing board. The pervasive presence of the junior colleges is significant. They span the entire State. They are accessible to virtually all Mississippi citizens. They actually enroll over 60% of all Mississippi high school graduates electing to participate in public higher education. (P.A. 119a; Exh. Bd-185 at 1-3, J.A. 1201-02)

"Plan of Compliance." (P.A. 119a;[4] Exh. Bd-019, Bd-020, J.A. 904)

From the very outset of Plan development and implementation the Board declared the State's commitment to equal educational opportunity with irrefutable clarity. The Plan of Compliance identified its "basic objective" as "the improvement of educational opportunities for all citizens of the State of Mississippi with particular emphasis on equal access and retention for members of minority races"; the Plan repeatedly asserted as its fundamental goal the attraction of other-race students, faculty and staff to each university. (Exh. US-1 at 3, 6, 12, J.A. 66, 68, 73) The Board directed the universities to implement the Plan to the best of their abilities. The Board pointedly responded to institutional questions concerning interpretation of the commitments under the Plan. For example, the Board explicitly instructed: "official representatives of institutions are not to become directly involved with employers, schools, realtors, athletic officials, medical care providers, and all others who do not have a nondiscriminatory policy regarding race"; "recruiting of students is prohibited at schools that have not filed with the Board . . . a nondiscriminatory policy"; and each university is to "pay careful attention" to the "commitments to employment and promotions of university

[4] Citations to the lower court opinions will be referenced to the appendices following the United States' petition in which the opinions have been reproduced. Designations will be "P.A. [page]."

personnel" identified in the Plan. (Exh. Bd-020, J.A. 904-06) The universities have properly responded.[5]

a. *Student Recruitment*. Each institution expends every reasonable effort to increase other-race student participation. (Exh. US-960 at 10, J.A. 778-79; Exh. US-965 at 91, J.A. 796-98; Exh. US-962 at 125; Exh. US-964 at 31; T. 3493-94, J.A. 1708; US-967 at 12-13; Exh. Bd-010 thru Bd-018) It is not just a matter of all student recruiters seeking other-race students, for the universities also employ minority recruiters charged with this specific responsibility. Moreover, the universities do not limit such desegregative efforts to specifically employed staff; they involve other-race students, faculty and alumni, sometimes as multi-racial teams, in their recruitment efforts. (P.A. 134a; *e.g.*, Exh. Bd-105 at 5, J.A. 913-14; Bd-069 at 5, Bd-044 at 6-7 & Bd-129 at 18; US-964 at 19-20, 25-26 & 39-40; Exh. US-962 at 9, 22 & 49; Exh. US-961 at 20, 28-29; Exh. US-950 at 17; US-967 at 7, 9 & 47; Exh. US-965 at 15-16 & 18-22; Exh. US-960 at 20, J.A. 779) Representatives of the predominantly white universities annually visit more than 100 predominantly black high schools, and representatives of the predominantly black universities expend similar efforts with respect to predominantly white high schools. (P.A. 134a-35a; *e.g.*, Exh.

[5] The Board has required, and the institutions have provided, annual reports exhibiting the affirmative efforts expended toward increasing other-race presence at each university. Following a detailed format established by the Board, the 109 comprehensive "implementation reports" submitted by the universities as of the time of trial demonstrate not only these efforts but also each institution's recognition of the State's serious commitment to affirmative action. (Exh. Bd-021 thru Bd-129)

Bd-105 at 41-60, J.A. 946-72; Exh. Bd-033 at Attmt 1; Exh. Bd-021 thru Bd-129, listings of schools recruited)

University publications and promotional activities are significant components of the minority recruitment endeavors. The universities consciously depict other-race students in recruitment brochures and other university publications. (*E.g.*, T. 3493, J.A. 1708; Exh. Bd-129 at 18, Bd-069 at 5 & Appendix, Bd-044 at 7; Exh. US-962 at 19-20) Indeed, they specifically design many such publications exclusively to appeal to other-race students. (Exh. Bd-133, J.A. 997; Bd-140 thru Bd-144, J. A. 1012-95; Bd-159, J.A. 1113; Bd-104 at 5, Appendix B; Bd-121, Annex C; Exh. US-964 at 32-33; Exh. US-965 at 22-24; Exh. US-961 at 37) The universities similarly utilize public media devices such as news releases, promotional radio spots, public service announcements, newspaper advertisements, and display sponsorships to emphasize other-race participation in campus life. (P.A. 134a; Exh. Bd-033 at 4; Exh. Bd-069 at 5-6; Exh. Bd-071 at 3; Exh. Bd-077 at 8; Exh. US-962 at 19-20) Still additional examples of the State's commitment to increase other-race enrollment include financial assistance and minority scholarship programs, consortiums, cooperative, graduate and professional opportunities programs with junior colleges and universities with substantial other-race enrollment, sponsorship of programs with particular other-race appeal such as "Black History Week" and "Black Awareness Month," and maintenance of campus offices of minority student affairs. (Exh. Bd-033 at 5; Exh. US-967 at 54; Exh. US-964 at 35-36; Exh. Bd-102 at 21, 32, 34, Appendix L; Exh. Bd-104 at 5 & Appendix H; Exh. Bd-058 at 21-22; Exh. Bd-068 at 14; Exh. Bd-114 at 5-7, 16)

Furthermore, the State's commitment need not be measured exclusively by efforts to attract other-race students. Once enrolled, other-race students enjoy completely desegregated campus environments. Minority students have significantly participated and succeeded at each institution. They have been elected to the universities' "Hall of Fame," to "Who's Who in American Colleges and Universities," "Mr. University" and homecoming queen. Blacks have participated in intercollegiate or intramural athletics, as varsity cheerleaders, in scholastic honorary societies, in bands and in performing groups. They have assumed leadership positions in a host of student government, school publication, residence hall and other student associations. (P.A. 135a; T. 3444, J.A. 1691; Exh. Bd-042 at 15; Exh. Bd-101 at 40-45; T. 3509-10, J.A. 1713-14; Exh. Bd-068 at 9-12; Exh. Bd-083, § 7.g; Exh. Bd-125 at 14, 22; Exh. Bd-034 at 9-10; Exh. Bd-045 at 10-11, 15-16; Exh. Bd-033 at 6; Exh. Bd-057 at 12-13; Exh. Bd-055 at 15-16; Exh. Bd-101 at 41-43; Exh. Bd-128 at 30-32; Exh. Bd-042 at 15; Exh. Bd-103 at 24)

Racial percentages are by no means determinative, but the substantial "statistical success" of the universities in student recruitment should not be overlooked. The actual representation of blacks in the freshman classes at Delta State University, Mississippi State University, Mississippi University for Women, and the University of Southern Mississippi is statistically in parity with the representation of blacks in the qualified pools. No statistical distinction according to race can be drawn at these predominantly white universities; qualified blacks and

qualified whites are equally likely to enroll.[6] (T. 4219, J.A. 1856-57)

b. *Admission Standards*. As in most states, a university education is not immediately available in Mississippi to all high school graduates, white or black. An aspiring first-time freshman student must complete a university preparatory curriculum and achieve a satisfactory score on the ACT.[7] Successful completion of certain essential

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[6] Private petitioners, but not the United States, attempt to utilize the University of Mississippi's (UM) absence from this list of institutions as evidence of discrimination. They of course ignore the obvious implications of such a blanket contention for the predominantly black universities. Private petitioners do also emphasize isolated individual complaints of blacks at UM, which complaints are largely unfounded. (T. 1393-96, J.A. 1474-76; T. 1441-43, J.A. 1491-93; T. 2693-2705, J.A. 1597-1604; T. 2775, J.A. 1634) Clearly any alleged statistical shortfall or solitary grievances at UM cannot be attributed to any lack of genuine institutional commitment to nondiscriminatory policies and affirmative action. UM's other-race procedures are the same as, or in some instances even more elaborate than, those of other predominantly white institutions who may have enjoyed greater "statistical success." (T. 4118-32, J.A. 1837-46; Exh. US-962 at 9, 26-30, 119-25; Exh. Bd-094 thru Bd-105; Exh. Bd-140 thru Bd-147, J.A. 1012-1095; Exh. Bd-104 at 30-31 & Bd-103 at 28) The achievements of black students at UM are numerous and demonstrate UM's acceptance of black students into mainstream campus life. (Exh. Bd-100 at 80-85 & Bd-101 at 40-46) UM has dedicated over $6,000,000 of its own institutional funds to affirmative action. (T. 4132, J.A. 1845) The district court correctly found no evidence that the comparatively low black enrollment results from official action. (P.A. 186a)

[7] The current admission standards are set forth in exhibit Bd-183a. (J.A. 1174) They have been pointedly summarized by

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academic courses in high school significantly contributes to academic readiness for the university experience. (T. 3573-84) The ACT is indisputably a reliable instrument used nationwide as an integral component of college admission standards. Not an aptitude test, the ACT is a standardized measurement of developed academic abilities deemed important for success in college. (T. 3711-14, J.A. 1759-61) The positive relationship between performance on the ACT and academic achievement has been clearly demonstrated at Mississippi universities. (P.A. 129a; T. 3458-59, 3726-28, 3763-64; US-967 at 75-78; Exh. Bd-275)

The universities' particular curriculum and ACT requisites are in no respect rigorous. No specific grade point average is even required. The ACT scores needed for automatic admission are extremely modest levels of achievement. Scores of 15 are only on the verge of a freshman reading level. (P.A. 130a; Exh. Bd-190 at 5-10) Nonetheless, students who score as low as 9 on the ACT are still considered for admission under exceptions policies. Students who achieve a 9 on the ACT English and social studies tests are only reading at a ninth grade level.[8] (T. 3732-33, J.A. 1769) Thus, the requisite score

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both lower courts. (P.A. 7a-8a, 126a-28a) These present standards are plainly not limited to performance on standardized tests. It should probably be noted that the ACT organization has changed the test grading practices since trial. For example, a score of 15 in 1987 would be an 18 in 1991. This change is, however, of no substantive consequence here.

[8] Ninety-five percent of all students tested nationwide score 9 or above and over 70% of all students score 15 or above. (P.A. 130a; Exh. US-874 at 9) Nine out of every ten ACT-

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levels at Mississippi universities differ dramatically from institutions having highly selective or even selective policies. (T. 3729-30, J.A. 1768) The Board's admission standards are also less demanding than NCAA Proposition 48, the well-known national policy for athletes.[9] (P.A. 131a-32a; T. 358-485, J.A. 1730-31)

Furthermore, no applicant to a public university is ever ultimately denied the opportunity to obtain a university degree for failure to achieve a particular ACT score, including even the 9. Admission is at most deferred. Students may attend a public junior college without test score requirements and transfer after successful completion of as few as 15 hours. Thousands of students elect to attend junior colleges in Mississippi; substantial numbers of these students subsequently transfer to public universities. (P.A. 133a; Exh. Bd-185, J.A. 1201-06; T. 3445-46, J.A. 1692; T. 3504-05, J.A. 1711; T. 3724-25, J.A. 1767)

(Continued from previous page)

tested students in Mississippi, including 80% of all black students, score 9 or above. (T. 3730-31, J.A. 1768-69) The mean ACT score for blacks who evidence genuine aspirations for a university education by completing the high school college preparatory curriculum was 14.3 in 1986. (P.A. 132a; Exh. Bd-170) An expert for the United States appropriately characterized scores of 10 and 11 as "drastically low" and certainly not indicative of academic readiness for university instruction. (P.A. 130a-31a; Exh. Bd-463 at 160-61, J.A. 1304-05)

[9] The Court should recall when evaluating the petitioners' admission challenges that the NCAA standard of an ACT score of 15 plus a 2.0 high school grade average with no exceptions applies uniformly to universities nationwide. (T. 3584-85, J.A. 1730-31)

An ACT regional vice president with extensive experience in utilization of the ACT in college admissions standards persuasively testified to the reasonableness of the Board's present standards, including specifically the use of the ACT. While acknowledging that Board practices may not comport precisely with every ACT suggestion, the ACT executive repeatedly emphasized the reasonableness of the standards. He appropriately evaluated the Board's use of the ACT in the context of the scores required, other educational criteria considered, and transfer policies. (T. 3698-3710, 3715-33, J.A. 1753-69; Exh. US-970 at 124-26, 133-34, Dep. Exh. 5) The ACT executive directly confronted the very ACT-published statement on which petitioners so heavily rely. In his professional judgment the admission standards in their totality (*i.e.*, the inclusion of modest ACT scores, high school academic achievement as measured by courses taken, multiple "high risk" criteria such as high school grades, class rank, extracurricular activities, special talents, and recommendations, and liberal transfer policies) are consistent with ACT's encouragement of utilization of criteria in addition to test scores in making admission decisions. (T. 3735-36, J.A. 1769-70)

Today's admission standards simply cannot be credibly attributed to State actions of the now distant early 1960's. The relevant admission standard actions have been taken by an altogether different Board under totally different circumstances based upon different, reasonable educational criteria and with different, reasonable educational objectives. Nothing in Board actions evidences purposeful discrimination or any impermissible perpetuation of ACT utilization.

The Board implemented the pertinent admission standards in 1976 out of a systemwide concern for student quality. This concern addressed not just the quality of entering students but also the level of university instruction and quality of graduates. The Board understandably lacked confidence in grades due to grade inflation and lack of uniform course content in Mississippi high schools. It selected the ACT test and composite scores of 15 and 9 only after consultation with ACT. Moreover, the Board has always viewed the ACT requirements as modest to terribly low. The Board in any event has always recognized the substantial presence of open admission junior colleges and implemented liberal transfer policies. (P.A. 121a-23a, 179a; T. 3550-63, J.A. 1717-24; Exh. Bd-180)

Furthermore, except for Mississippi University for Women, modifications to the admission standards since 1976 have not included an increase in ACT score requirement at the predominantly white universities. Rather, the Board has mandated exceptions to the minimum for unqualified admission involving multiple education criteria. It first confronted the continued inability of low achieving students to perform adequately in college not by raising admission standards but by implementation of costly developmental education programs. The Board implemented the high school course requirements, a measure of academic achievement in addition to the ACT, only after surveying high school educators to confirm the availability of such a college preparatory curriculum to all students. (P.A. 123a-25a; T. 3566-67, 3571-81, J.A. 1726-30) Furthermore, all relevant admission standard actions have been taken at times when the Board's and

institutions' substantial commitments to increase minority presence were otherwise evident.

Nor can it be legitimately asserted that the admission standards discriminatorily affect blacks. Black students do on the average score somewhat lower on the ACT than do white students, but a variety of socioeconomic factors, and not simply race, affect a student's level of academic development. (P.A. 130a; Exh. Bd-172 at 3, 10; Exh. US-874 at 7-8) Blacks' disproportionate elections in high school not to take a college preparatory curriculum contribute to the disparity. (P.A. 130a; T. 2284, 2314) Nonetheless, virtually no black students are denied admission to the predominantly white universities for low ACT scores. For example in 1986, Mississippi State University denied admission to no applicant scoring above 11 on the ACT; the University of Mississippi denied admission to only nine black freshmen applicants who completed the admission process; and the University of Southern Mississippi has been unable in recent years to fill its quota of students who score below 15 because of an insufficient number of applicants whose high school record otherwise warranted admission. (P.A. 131a; T. 3440-41, J.A. 1688-89; T. 4165-66, J.A. 1846; Exh. US-964 at 140, 144-45)

The record similarly establishes that utilization of the ACT composite score of 15 is simply not the cause of the racial identity of the predominantly black institutions. An eminently qualified statistician demonstrated at trial that these institutions are not predominantly black because black students who first prefer to attend a predominantly white institution were "channeled" to black universities after failing to obtain a 15. (P.A. 184a; T. 4228-29, J.A.

1859) Moreover, petitioners' conclusory contentions that the State's use of the ACT "perpetuates duality" wholly fail to account for the existence of large numbers of whites who themselves score below 15. Indeed, there are greater numbers of whites than blacks at such low levels of academic development who certainly have the same opportunity as black students to choose a predominantly black university. (Exh. US-894i, 894j, J.A. 639-40, 645)

The petitioners' challenges to utilization of the ACT should also be examined in light of the United States Secretary of Education's confrontation of the well-known educational crisis facing this Nation. The National Commission on Excellence in Education created by the Secretary unequivocally recommends that universities "adopt more rigorous and measurable standards, and higher expectations, for academic performance and student conduct . . . and raise their requirements for admission." The Secretary specifically directs that "standardized tests of achievement (not to be confused with aptitude tests) . . . be administered . . . particularly from high school to college . . . to certify the student's credentials." (Exh. Bd-201 at 9, 11, 12, 27 & 28, J.A. 1216-23) The admission concerns confronted by the Board over the past decade and the remedial actions taken are among the various findings and implementing recommendations of the Secretary's blue ribbon task force. (T. 3585-91, 3600-02, 3618-20, 3625)

c. *Faculty and Staff Employment*. At trial petitioners did not challenge the significant statistical presence of other-race faculty at the predominantly black universities. The United States abandoned its faculty and staff employment contentions altogether before the court of appeals and does so again before this Court. Private petitioners do continue to allege underrepresentation of

black faculty at the predominantly white institutions. They do so, however, in the teeth of overwhelming proof of considerable affirmative efforts to attract, employ, and retain black faculty and in utter disregard of State satisfaction of any realistic statistical expectation.

The predominantly white universities have deployed a host of strategies to attract and retain qualified black faculty. (P.A. 136a) For example, they maintain formal equal employment opportunity and affirmative action programs and empioy equal opportunity officers. (T. 3431, J.A. 1683; T. 3498-99, J.A. 1710; T. 4119, J.A. 1837-38) Positions are widely publicized in the prominent higher education publications, including publications of special minority interest. (Exh. US-758, US-946 at 114, J.A. 772; US-959 at 14) The universities actively recruit at the graduate schools of predominantly black universities, participate in cooperative and faculty exchange programs, and develop black faculty from the ranks of their own graduate students. The severe financial crisis notwithstanding, special funds are allocated to minorities for salary incentives, supplementation and support. (T. 3425-26, J.A. 1681-83; T. 3947, J.A. 1832; Exh. US-946 at 115, J.A. 772-73; Exh. Bd-041 at 18, Bd-066 at 19, Bd-067 at 18, Bd-104 at 26-27) The universities prefer minority faculty in application for faculty housing. (T. 4130-31, J.A. 1844; Exh. Bd. 104 at 25)

There simply is no other recruitment procedure which the State could implement which would assure greater minority faculty representation at the predominantly white institutions.[10] (P.A. 199a; T. 3950-51, J.A.

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[10] Nor have petitioners attempted to identify any appreciably different strategies. They do suggest a faculty

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1834) Indeed, Mississippi's efforts are very similar to what institutions are doing in the recruitment of minority faculty throughout the Nation. This nationwide effort in higher education to employ minority faculty and administrators understandably significantly hampers the State's efforts. The vigorous competition of business and industry for the extremely limited supply of blacks holding terminal degrees compounds the difficulty. Moreover, the State's lower salaries particularly impede employment of black faculty who, due to high demand, enjoy substantial leverage in negotiations. The State's competitive disadvantages likewise make it difficult to retain black faculty when hired. (P.A. 136a-38a; T. 3425-26, J.A. 1681-83; T. 3940-50, J.A. 1827-34)

The imposing difficulties confronting the predominantly white universities notwithstanding, there is compelling statistical evidence of affirmative action in the hiring process. Since 1974, the percentage of blacks hired significantly exceeds the b[illegible]epresentation in the qualified labor pool. Despite [illegible]higher turnover rate for blacks than for whites, bi[illegible]epresentation statistically comports with the relevant nationwide labor market for faculty employed since 1974.[11] (P.A. 138a, 199a; T. 4237-42, J.A. 1861-65)

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clearinghouse. Yet the State implemented one for a time and it did not work. (T. 951-53, J.A. 1445-47)

[11] While such statistical evidence does not specifically apply to administrative positions alone, private petitioners' administrative staff contentions improperly extricate administration from the State's overall affirmative nondiscriminatory employment commitments. Private petitioners also improperly

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d. *Institutional Resources.* The State disputes the relevance of institutional differences in a diverse statewide system of public higher education with genuine nondiscriminatory admissions and operational policies. The United States' comparison of resources according to predominant racial presence notwithstanding, the United States ultimately agrees that there is no legal obligation "to correct disparities between what was provided historically black schools – in terms of funding, programs, facilities, and so forth – and what was provided historically white schools." (U.S. Brief at 32) Private petitioners still insist, however, that resources must be redistributed to remedy the alleged "discrimination in resource allocation" to which blacks are subjected. Institutional differences do exist, but the record establishes such differences do not establish "discrimination." Blacks themselves are substantial beneficiaries of the educational opportunities nondiscriminatorily afforded by the comprehensive universities possessed of "superior" resources.

i. *Missions.* Definition of mission defines institutional purpose and scope in relationship to instruction of students, research and public service. There is no dispute

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emphasize the presence of substantial numbers of black faculty at the predominantly black universities. The "pull of the umbilical cord" to return to predominantly black institutions no doubt substantially contributes to such black faculty presence; many feel very strongly about the preservation of predominantly black institutions; they possess a missionary commitment to the young blacks in attendance at such institutions. (T. 3964-67) In any event this circumstance cannot be attributed to State failure to expend reasonable efforts to attract qualified black faculty to the predominantly white universities.

that distinctions in institutional mission are commonplace within public systems of higher education;[12] that the Board's assignment of differential missions is educationally reasonable; and that the distinctive mission assignments do not evidence purposeful discrimination. (P.A. 193a) Private petitioners do erroneously assert that the 1981 mission designations discriminate against blacks by preserving a less expansive program scope at the predominantly black universities.

Again, this private petitioner assertion is first an institutional contention. It ignores the fact that many blacks enjoy the educational opportunities at the comprehensive universities. It is true that the 1981 mission designations limited the predominantly black universities. It is equally true, however, that the scope of the designations "put boundaries around all institutions." (T. 3654-56, J.A. 1744-45) Moreover, the 1981 mission designations contemplated a "more comprehensive" status for predominantly black Jackson State University than for predominantly white Delta State University and Mississippi University for Women. (Exh. Bd-274, J.A. 1253) Furthermore, the Board envisions continued enhancement of Jackson State University's urban mission,[13] including

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[12] In the words of one of petitioners' key experts: "The unique character of American higher education is embodied in the concept of diversity. Diversity is the quality that differentiates among colleges and universities. It is the quality of distinctiveness. This quality says that there is no better or best kind of collegiate institution; there are only different kinds, often with different expenses." (T. 608, J.A. 1400-01; Exh. Bd-459 at 28, J.A. 1284-85)

[13] Jackson State University has also enjoyed past substantial mission enhancement. For example, during a 17-year

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meaningful graduate offerings with an urban emphasis and increased enrollments of better prepared students. (T. 938-43, J.A. 1442-43; Exh. Bd-274, J.A. 1255-56; Exh. US-683 at 8-10, J.A. 273-75)

The present missions of the State's universities are a product of historical development. Yet this circumstance is true of public institutions everywhere. There was no comprehensive black university during the *de jure* era, but the mere absence today of a major doctoral granting, predominantly black university does not indicate discriminatory mission assignments. Petitioners' own expert acknowledged that Jackson State is much more comprehensive than Delta State University and Mississippi University for Women. (T. 289, J.A. 1340) While they share the same mission designation, predominantly black Alcorn State University is more comprehensive than predominantly white Mississippi University for Women. (T. 272-73) Petitioners offered no evidence addressing the educational justification for, or the educational feasibility of, a fourth and predominantly black major doctoral granting institution or any reassignment of existing institution missions.

ii. *Funding*. State funding of basic university operations is based upon a formula appropriately tied to the

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period through 1984: student enrollment tripled; faculty size and quality materially increased; five new schools were established; the graduate school grew from a single master's degree in school administration to 35 master's degrees, 15 specialist's degrees and a doctorate in early childhood education; monumental physical expansion occurred. (P.A. 139a; T. 4381-84, J.A. 1877-79) One United States expert went so far as to state that "Jackson State has made about as much progress as any institution in the country." (Exh. Bd-463 at 108-09, J.A. 1302)

educational activities of the respective universities.[14] It is undisputed that the Board's funding process adheres to commonly applied, reasonable educational criteria. The educational expectation is that institutions with greater program breadth and research emphasis receive greater funding and thereby reflect the higher per student total revenues and expenditures. (P.A. 196a)

The Board so explained its funding practices. To further prove the absence of discrimination the Board compared Mississippi's institutions with their regional "peers." These unchallenged analyses reveal that at least for the past decade the State's comprehensive universities have been underfunded when compared to institutions of similar mission. They further revealed, however, that Jackson State University and the four regional universities, two of which are predominantly black, have been overfunded under similar comparisons.[15] (P.A. 162a; T. 3347-55, J.A. 1677-78) Thus, while funding for the three comprehensive universities is the predominant basis for petitioners' assertions, these institutions are the very ones being treated least favorably financially upon any consideration of institutional mission.

Private petitioners fare no better by comparing students rather than institutions. Their broad allegation regarding alleged less favorable financial treatment of black students than white students obviously does not

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[14] At the time of trial the academic discipline, student credit hours, and level of instruction primarily drove the formula.

[15] Further, no racial correlation whatever can be inferred from an analysis of the four institutions designated as regional universities. Petitioners' comparisons of these institutions with each other yielded in their own words a "very mixed pattern." (T. 542-43)

hold true under their own premise for the thousands of black students enrolled in the predominantly white comprehensive universities. Such an attempted direct focus upon students, while preferable to the irrelevant institutional analyses, nonetheless itself demonstrates an inherent fallacy in petitioners' resource contentions. Black students are allegedly "treated better financially" than other black students, white students better than other white students, white students better than some black students, and black students better than some white students. (P.A. 196a-97a; T. 640-41, J.A. 1406-07) This would obviously be true in any system of universities with differential missions.[16]

iii. *Programs*. Since the mid-1970's the State has subjected the quality, number and distribution of academic programs to much professional study. Doctoral programs were thoroughly reviewed from 1976 through 1979; they were again reviewed in 1985 and 1986. All programs below the doctoral level except certain professional

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[16] Petitioners declined to assess the educational justification for Board allocation of funds or the relative financial abilities of institutions to fulfill their educational missions. Further, the alleged "accumulated deficit" is not among the noncomprehensive universities. There is no correlation by race among the noncomprehensive universities in funding or with respect to areas in which funds have historically been expended. Yet, petitioners' own expert had written prior to his engagement in this case that comparisons of institutions with different missions "are largely without merit. They compare the proverbial 'apples and oranges,' for [such] universities are not similar; they are expected to do quite different things." Consequently, in studies before this litigation the expert was careful to adjust for distinctions in mission when making any comparisons across mission lines. (T. 604-18, J.A. 1398-1405; Exh. Bd-459 at 28, J.A. 1285)

programs were subject to an extensive six-year review commenced in 1980. The process involved not just substantial institutional participation but also extensive outside professional consultation. (P.A. 142a-43a; T. 3602-13, J.A. 1733-38)

The comprehensive review process resulted in the elimination of over 450 degree programs. Doctoral offerings at the predominantly white comprehensive universities have been reduced 50%. The overall offerings at all universities have been reduced by 1/3 with 69% of these terminated offerings having been at the predominantly white comprehensive universities. Only 11% of the programs eliminated were at predominantly black institutions. (T. 3608-10, J.A. 1736; Exh. Bd-263, Chap. I at 5, J.A. 1244-45) The Board concluded that the programs remaining were "of the highest quality possible with the available resources." (Exh. Bd-263 at Introd., J.A. 1237)

The question of unnecessary duplication was of "central concern" to the Board in the process. The Board was and remains highly conscious of its statutory charge to offer "the broadest possible educational opportunities . . . without inefficient and needless duplication." (Exh. Bd-263 at Introd., J.A. 1237) Following the review, the Board concluded further elimination of programs in significant numbers would both endanger institutional abilities to fulfill their missions and materially decrease access to quality academic offerings. (Exh. Bd-263 Chap. II at 5, J.A. 1245)

The United States asserts that "Mississippi's unnecessary duplication of programs at historically white and historically black schools serves no useful academic function while continuing and reinforcing Mississippi's dual system of higher education." The United States did not genuinely attempt, however, to prove such circumstances.

Instead, petitioners predicated their challenge upon a quantitative listing of programs as between the predominantly white and predominantly black universities. Petitioners did not evaluate program need, demand, cost, courses, faculty or level of difficulty of instruction. (T. 256-57, J.A. 1332-33; T. 266-67, J.A. 1336-37) Petitioners failed to investigate whether elimination of any additional program would affect access to higher education for Mississippi citizens. They scrupulously avoided any judgment as to whether any program should have been awarded, terminated, consolidated or transferred.[17] (T. 257-58, J.A. 1333)

Petitioners' definition of "duplication" had nothing to do with the educational rationale for a program's existence. Petitioners elected to define "duplication" as any instance where at least one predominantly black university and one predominantly white university offered courses in the same HEGIS discipline.[18] (T. 268, J.A. 1337) According to petitioners, "unnecessary" program duplication includes any offering by more than one institution in any discipline outside the basic core arts and

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[17] Furthermore, petitioners' institutional comparisons were not even based upon educational criteria but rather upon mere racial identifiability of institutions. Indeed, the witness "could not think" of any alleged basis but race for his group comparisons of the three predominantly black universities with the five predominantly white universities. (T. 263-64, J.A. 1335-36) He, however, "said nothing at all about the reasoning or motivation" underlying program actions. (T. 266, J.A. 1336)

[18] "HEGIS" refers merely to a classification system frequently used in higher education to identify the general subject matter of programs. It does not address the specifics of course content, instruction or other fundamentals which would reflect the actual scope of the program. (T. 73-74)

sciences.[19] Petitioners also maintained that all duplication at the master's level, regardless of discipline, is unnecessary. (T. 275-76, J.A. 1338-39) Thus, they advanced a statistically meaningless concept of common curricula within the system. Every institution duplicates other institutions.[20]

The record clearly reveals there is no pattern of duplication associated with the racial identification of institutions. There is no more duplication between the predominantly black institutions and the predominantly white institutions than one would expect to find when comparing any three institutions with any five institutions regardless of racial identification. Among the noncomprehensive universities, the three predominantly black universities are duplicated less than any other set of noncomprehensive institutions. (T. 4198-99, J.A. 1851-52; T. 4203-04)

Petitioners' distinctions in program quality or purported findings of program inequality are also solely

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[19] This wholly unrealistic definition means that petitioners considered any instance of a predominantly black and predominantly white university offering a course in, for example, business and commerce, accounting, business statistics, banking and finance, investment and securities, business management and administration, real estate, insurance, elementary education, or secondary education to be "unnecessary" program duplication. Stated differently, eight institutions could offer Russian, anthropology, or astrophysics without unnecessary duplication, but no two institutions could offer accounting, banking and finance or secondary education. (T. 275-77, J.A. 1338-39)

[20] The Board proved there are some 162 dual curricular systems in Mississippi under petitioners' definition. (T. 4197-98, J.A. 1851)

functions of institutional mission. The differences in petitioners' measures of program quality are not associated with race, but simply demonstrate the difference between comprehensive and noncomprehensive universities. There is no pattern among the noncomprehensive universities with respect to race. (T. 4206-07, J.A. 1852-53) Further, the pattern of program reduction resulting from program review has been less among the predominantly black institutions than among the predominantly white institutions. (T. 4213-14, J.A. 1853-54)

Private petitioners challenge the State's land grant programs because the predominantly white Mississippi State University possesses greater land grant resources than predominantly black Alcorn State University. Desegregation within Mississippi's land grant community is clearly not their focus. They ignore the blacks studying agriculture at MSU. They did not even attempt to address the motive, intent, good faith or educational justification underlying the State's present allocation of land grant resources. (T. 835-41, J.A. 1428-31) It was the State, and not petitioners, who pursued USDA input in this proceeding. Through the former administrative heads of the USDA's Cooperative State Research Service and Extension Service, the State proved its operation of these two fundamental programs was entirely consistent with USDA policies and practices.[21] (T. 3123-29, 3142-46, J.A.

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[21] These findings likewise rebut the United States one-sentence challenge alleging "extraordinary duplication." Under federal oversight the two universities jointly developed a single comprehensive program of agricultural research for the State. (P.A. 154a; T. 3104, J.A. 1414-15; T. 3142-46, J.A. 1664-67) The Extension Service of the USDA has insured that the two universities' extension programs are supplementary and not duplicative. (T. 3284, J.A. 1672) *See* Exh. Bd-263 at Chapter II (Board explanation for agriculture programs).

1661-67; T. 3295-99, J.A. 1673-76) The record plainly establishes that land grant resources have been nondiscriminatorily allocated consistent with legitimate educational and federal government criteria.[22] (P.A. 150a-56a, 198a)

iv. *Facilities*. Private petitioners' facilities contentions perhaps prove better than any other their refusal to acknowledge that substantial State efforts eventually satisfy the duty to disestablish, no matter how defined. The record makes clear no racial inference can be drawn from the distribution of facilities. (P.A. 163a-66a, 195a; T. 3862-98, J.A. 1806-15) Jackson State University's president attested to the "monumental physical expansion" enjoyed by the institution during his 17 year tenure. (*supra* at 20-21 n.13) Petitioners' own expert readily admitted: "There has been *equitable treatment* in recent years" of the predominantly black institutions, for *"it's clear* that physical facilities resources *in the past 30 years* in Mississippi have been allocated equitably from the viewpoint of racial characteristics of the institutions." (T. 493-94, J.A. 1379) Petitioners' assertion of the "inferior character" of the predominantly black universities' facilities is at most a function of institutional mission. They do not bother to dispute, apart from their mission challenge, the district

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[22] Petitioners' references to program offerings at off-campus centers are misleading and pointless. The Board has almost entirely curtailed predominantly white institution participation in off-campus centers. Indeed, Board actions were such that petitioners limited their "off-campus center" proof to the pre-1981 period. Despite the district court's stated expectation and United States counsel's assurance that any such petitioner contentions would be brought current, petitioners failed to do so. (T. 938-40, J.A. 1442-43; T. 3432-35, J.A. 1683-86; T. 77-79, 251-53; Exh. U.S. 757)

court's finding that these universities possessed facilities of a "character" commensurate with their mission. (P.A. 166a)

3. *The District Court's Decision*. The district court conducted a five-week bench trial and comprehensively considered the testimony of 71 witnesses and some 56,700 pages of exhibits. (P.A. 109a) The court ultimately held that the "current actions on the part of the [State] demonstrate *conclusively* that the [State is] fulfilling [its] affirmative duty to disestablish the former *de jure* segregated system of higher education." (P.A. 201a) In so holding, the court flatly stated that "the affirmative duty to dismantle a racially dual structure in the elementary and secondary levels applies also in the higher education context." (P.A. 170a-71a) Recognizing, however, the distinct attributes of higher education, the court declined to find any "level of racial mixture" to be "necessary to 'effectively' desegregate the system." (P.A. 171a) Nevertheless, the court plainly concluded that student enrollment, faculty employment, and staff hiring patterns must be examined. It simply determined that "greater emphasis should instead be placed on current state higher education policies and practices in order to insure that such policies and practices are racially neutral, developed and implemented in good faith, and do not substantially contribute to the continued racial identifiability of individual institutions." (P.A. 177a)

The court found that the State had indeed implemented "race-neutral policies and procedures" involving student admission, student recruitment, faculty employment, staff hiring, and resource allocation. Moreover, the court concluded the State "[has] also undertaken substantial affirmative efforts in the areas of other-race student and faculty-staff recruitment and funding and facility

allocation."[23] (P.A. 201a) The court noted petitioners' institutional enhancement claims sounded much like the assertion of Fourteenth Amendment rights on behalf of state political subdivisions, rights which just do not exist. (P.A. 190a-91a) Nonetheless, the court made the institutional analyses suggested by petitioners but found no disparities in resources related to the "racial identifiability" of institutions.[24]

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[23] Among its many specific factual findings substantiating its ultimate conclusions, the district court found with respect to student admission and recruitment: (i) the State's current admission policies were adopted for nondiscriminatory purposes and are "inherently reasonable and educationally sound" (P.A. 179a, 181a, 185a); (ii) "the State has used every reasonable means at its disposal in its recruitment efforts" (P.A. 187a); and (iii) the continued identifiability of institutions by student racial makeup is the "result of a free and unfettered choice on the part of individual students." (P.A. 187a) The court likewise concluded that no "additional minority faculty and staff recruitment procedures" exist which the State "could implement which would assure greater minority faculty and staff representation at the predominantly white institutions and minority staff representation with the Board of Trustees' own organization." (P.A. 199a)

[24] For example, the court's factual findings included: (i) "the current mission designations are rationally based on sound educational policies" (P.A. 193a); (ii) petitioners failed to prove any placement of academic programs associated with race or that any program reallocation "would be feasible, educationally reasonable, or would offer any hope of substantial impact on student choice" (P.A. 194a); (iii) no racial pattern exists with respect to the provision or condition of physical facilities (P.A. 195a); (iv) "while differences in level of funding obviously exist, these differences are not accountable in terms of race, but rather are explained by legitimate educational distinctions among institutions" (P.A. 196a); and (v) the differentiations made in land grant programs are "educationally sound and are not motivated by discriminatory motive." (P.A. 198a)

4. *The Court of Appeals' Decision.* The court of appeals plainly stated at the outset of its opinion the ultimate basis for its affirmance: "Finding that the *record makes clear* that Mississippi has adopted and implemented race neutral policies for operating its colleges and universities and that *all students have real freedom of choice* to attend the college or university they wish, we affirm." (P.A. 2a) (emphasis added). Like the district court, the court of appeals acknowledged that "Mississippi was . . . constitutionally required to eliminate invidious racial distinctions and dismantle its dual system." (P.A. 13a) Similar to the district court, the appellate court emphasized, however, that "universities are not simply institutions for advanced education. They differ in character fundamentally from primary and secondary schools." (P.A. 23a) The court concluded that delineation of the duty to disestablish must necessarily honor the distinctive attributes of higher education, particularly freedom of choice and institutional diversity. (P.A. 23a-26a) The appellate court read *Bazemore*,[25] in conjunction with *ASTA*,[26] to be the proper assessment of this " 'wholly different milieu' of a voluntary association." (P.A. 25a) Because Mississippi, in thought, word and deed, discontinued "prior discriminatory practices" *and* adopted *and* implemented "good-faith, race-neutral policies and procedures," the court of appeals held that the State had satisfied its affirmative duty to disestablish. (P.A. 26a)

It cannot be overlooked that the court of appeals did not stop with definition of the legal duty to disestablish;

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[25] *Bazemore v. Friday*, 478 U.S. 385 (1986).

[26] *Alabama State Teachers Ass'n v. Alabama Public School and College Auth.*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969).

it scrutinized the record to assure the presence of, and the use and encouragement of, genuine good-faith, race-neutral policies which afford "real freedom of choice." The court saw two components of the system as bearing most directly on the presence of "true" student choice: institutional mission designation and student admissions policies. The court of appeals found "the record amply supports the findings of the district court that the [institutional mission] designations are commonly used, educationally sound, and not motivated by discriminatory intent." (P.A. 31a) The court held "the district court gave full consideration to all aspects of the admissions process"; and it concluded district court findings that the "current admissions policies and procedures in effect in Mississippi universities were adopted and developed in good faith and for nondiscriminatory purposes" were not clearly erroneous. (P.A. 34a-35a)

The en banc court also found statistical parity in respondents' faculty employment, noted the genuine commitment to increase black employment at the predominantly white universities, and acknowledged the substantial difficulties inherent in minority faculty recruitment. (P.A. 35a-36a) The court of appeals had "nothing to add" to district court findings concerning alleged "disparities between the historically black and historically white institutions regarding program offerings and duplication among universities and branch centers, faculty, funding, library volumes, facilities, and land grant programs," with only one exception. (P.A. 36a) The court of appeals did find institutional "disparities" today to be "reminiscent" of the segregated system, but only in the sense that present institutional mission designations cannot be totally extricated from an institution's past. The court stated that such institutional distinctions do not

"den[y] equal educational opportunity or equal protection of law," for respondents "have adopted good-faith, race-neutral policies and procedures and have fulfilled or *exceeded* their duty to open Mississippi universities to all citizens regardless of race." (P.A. 37a) (emphasis added). The en banc court rejected outright the private petitioner suggestion that such institutional differences require resource allocations to universities according to race to make the predominantly black universities "equal" to the predominantly white comprehensive universities. (P.A. 37a)

SUMMARY OF ARGUMENT

The legal principles which govern this controversy are not best analyzed in the abstract. They are inextricably tied to the facts in Mississippi. Just as Mississippi once promoted an unconstitutional system of higher education with schools of higher learning reserved solely for whites or solely for blacks, the State now affords real freedom of choice extending to all students and to all schools. Today's system, in policy and in fact, provides open, unimpeded access for all with no barrier on account of race. More than mere race neutral policy prevails; for most of two decades there has been admirable State encouragement directed to desegregation. It may be that Mississippi was not required to go beyond adoption and implementation of race neutral policies so as to promote and encourage the exercise of choice in favor of an "other-race" institution. But it did. Thus, the State does not have the burden of arguing a legal standard applicable to less persuasive facts.

The duty imposed on Mississippi to dismantle or disestablish its former system of de jure segregation has

been fulfilled. Mississippi's existing system is constitutional because there is no evidence of present intentional discrimination. Continuing racial identifiability of institutions resulting from individual student choice does not equate to unconstitutionality because the constitutional vice of state-imposed segregation has been eliminated. There exists unfettered, individual choice in Mississippi. The trial record reflects a commitment to the operation of a statewide system dedicated to the enhancement of integrated higher education opportunities coupled with the goal of quality education.

Bazemore best speaks to the fulfillment of the State's duty to disestablish in a setting, *i.e.*, public higher education, where individual choice traditionally plays a significant role and, indeed, is consistent with laudable educational objectives. *Bazemore* heeds *McLaurin*. *Bazemore* honors *Brown*. *Bazemore* appropriately distinguishes *Green*. Equal protection is a fact where equal opportunities afforded by the State are genuinely available to all on equal terms. Neither the Constitution nor Title VI require more than the fact of equal protection.

The United States challenges the standards for admission to the respective universities but in doing so, necessarily ignores the record. Present-day admissions standards exist for reasons unrelated to the "Meredith era." Even so, they are distressingly modest. The evidence is that virtually all black applicants to predominantly white universities are accepted. There is no evidence that black students are forced to apply to a predominantly black university. Admission standards are no more unconstitutional "vestiges" or "remnants" of past de jure segregation than class attendance and class examination requirements.

The United States contends, again in the teeth of the findings below, that there are so-called "duplicative" programs in place which arguably impede further desegregation. Stripped of rhetoric, the contention is that it is unconstitutional for a single predominantly black and a single predominantly white university to both offer a course in business or education. A choice among institutions which offer business and education is no more an unconstitutional "vestige" or "remnant" than a choice between institutions which offer English, history, mathematics, social studies and science.

The private petitioners alone continue to press for more than free choice among all institutions including the comprehensive universities. The United States does not join in the suggestion of the private petitioners that black students have a constitutional right not only to choose a predominantly black institution but also a constitutional right upon enrollment to find buildings, grounds, programs and accoutrements equal to the comprehensive university the students could have chosen in the first place. Putting aside questions of educational policy and educational reasonableness or financial capability, the assertion that the Court must compel the State to provide at least equal resources to schools with a predominantly black population as a matter of constitutional or statutory necessity deserves short shrift.

ARGUMENT

I. Mississippi has fulfilled its duty under the Fourteenth Amendment to disestablish state-imposed segregation in higher education through the adoption and years of implementation of good-faith, genuinely nondiscriminatory policies which do not contribute to institutional racial identifiability.

A. The constitutional duty to disestablish state-imposed segregation in higher education may be satisfied by discontinuing prior discriminatory practices and implementing good-faith, race-neutral policies and procedures.

Definition of a state's duty to disestablish de jure racially separate systems of higher education must focus upon the constitutional vice of state-imposed segregation. The crux of the inquiry is what is required of a state to assure genuine equality of treatment of similarly situated citizens. A state must of course admit black applicants to public institutions of higher education "under the rules and regulations applicable to other qualified candidates." *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413, 413-14 (1956); *Sweatt v. Painter*, 339 U.S. 629 (1950); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938). This Court has not suggested, however, any duty of "disestablishment" for statewide higher education beyond good-faith nondiscriminatory policies and practices. Instead, the Court has expressly recognized "a vast difference – a Constitutional difference – between" state-imposed racial bars and racial identifiability continuing on account of individual choice. *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 641 (1950).

The assertion that the Constitution requires no more than equal treatment is not to beg the determinative question of how the duty to disestablish is to be defined.

Mississippi acknowledges a duty to dismantle its dual system derived from *Brown v. Board of Education*, 347 U.S. 483 (1954). The emphasis on nondiscriminatory policies is to say, however, that *Brown* itself went no further. *Brown* identified the constitutional right as the "availability on equal terms" of the educational opportunities afforded by the State. *Id.* at 493. The constitutional vice *Brown* condemned was state-imposed separation of the races. The judicial charge was "to effectuate a transition to a racially nondiscriminatory school system," one which recognized that "at stake [was] the personal interest of [black students] in admission to public schools as soon as practicable on a nondiscriminatory basis." *Brown II*, 349 U.S. at 300-01. This Court's decisions mandating nondiscriminatory maintenance of public parks and facilities are to the same specific effect. *E.g., Watson v. City of Memphis*, 373 U.S. 526, 529-30 (1963).

To be sure, *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968), and its progeny in public primary and secondary education, rest on *Brown;* but neither *Green's* rejection of a freedom of choice plan that showed a lack of good faith, *Swann's* rejection of race-neutral policies imposed on a "loaded game board," nor any other grade school decision of this Court require state actions intended to manipulate racial presence in the altogether different arena of public higher education. Indeed, this Court long ago recognized that higher education cannot be analyzed, tested or remedied precisely as elementary education. You have specifically grouped parks *and state universities* to distinguish them from elementary and secondary schools because desegregation of parks and state universities "do not present the same kinds of cognizable difficulties inhering in elimination of racial classifications in schools, at which attendance is *compulsory*, the adequacy of teachers and facilities crucial,

and questions of geographic *assignment* often of major significance." *Watson*, 373 U.S. at 532 n.4.

Consequently, it is this Court's explicit sanction in *Bazemore* of nondiscriminatory policies where individual choice determined participation that delineates the duty to disestablish in higher education. *Bazemore* plainly identifies the duty to disestablish state-imposed segregation in noncompulsory state-sponsored educational programs. Prior to 1965 the North Carolina Agricultural Extension Service *assigned* students according to race for participation in 4-H or homemaker clubs. Thereafter "in response to the Civil Rights Act of 1964 the Service discontinued its segregated club policy and opened [the clubs] to any otherwise eligible person regardless of race." 478 U.S. at 407. Nevertheless, "a great many all-white and all-black clubs" remained.

The Court's holding based on these facts could not be clearer: "[T]his case presents no current violation of the Fourteenth Amendment *since* the Service has discontinued its prior discriminatory practices and has adopted a wholly neutral admissions policy." 478 U.S. at 408. In so holding the Court focused not on the alleged continuance of "discriminatory effects" of state-imposed segregation but on the absence of evidence of present discrimination. The Court did not remotely require any comparative examination of program duplication[27] or the relative attractiveness of any club activity to blacks and whites. The Court neither undertook nor suggested any determination whether all "practicable" efforts had been

[27] Petitioners claim *Bazemore* rests on the absence of differences among clubs. If the clubs were identical, North Carolina was guilty of "program duplication" far more pervasive than that which allegedly exists in Mississippi.

expended to alter the racial makeup of clubs. Instead, the Court unhesitantly rejected application of *Green* to the "wholly different milieu" of noncompulsory educational programs. The Court emphasized that your "cases requiring parks and the like to be desegregated lend no support for requiring more than [discontinuation of prior discriminatory practices and adoption of a wholly neutral admissions policy.]" 478 U.S. at 408.

In what was admittedly a summary affirmance, this Court also recognized material distinctions between compulsory lower education and noncompulsory higher education in *Alabama State Teacher's Association v. Alabama Public School and College Authority*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969) (*ASTA*). On the heels of *Green*, the three-judge court in *ASTA* concluded that the duty to disestablish or "dismantle" a dual higher education system is necessarily fulfilled by the adoption and implementation of good-faith nondiscriminatory practices. Justice Douglas' specific dissent from this Court's summary affirmance is instructive; he dissented from limiting the duty imposed upon higher education and from failing to apply the full duty imposed upon elementary and secondary education.[28]

Further, the well-reasoned rationale of *ASTA* to which the *en banc* court of appeals adhered is all the more compelling in light of your subsequent decision in *Bazemore*. Student choice in higher education necessarily requires that the student "face the full range of diversity

[28] The court of appeals correctly observed that the Court's summary affirmance of *Norris v. State Council of Higher Education for Virginia*, 327 F.Supp. 1368 (E.D. Va.), *aff'd*, 404 U.S. 907 (1971), is not inconsistent with *ASTA*. Unlike *ASTA*, the lower court in *Norris* found that state action had both a discriminatory *"purpose* and effect." (P.A. 18a)

in goals, facilities, equipment, course offerings, teacher training and salaries, and living arrangements" which historically have marked higher education throughout the Nation. *ASTA*, 289 F. Supp. at 788. Such a role for student choice obviously stands in even starker contrast to the student choice rejected in *Green* than did the element of choice honored in *Bazemore*. Elementary and secondary education is unique among public benefits. Unlike a college education, it is universally available. It is mandatory. It is rigidly controlled. Uniformity, rather than diversity, is a fundamental goal. Due to this uniformity, as well as the geographically insular nature of school districts, courts view faculty, students and staff as fungible. This unique characteristic means that in many cases racial populations themselves can be readily manipulated.

Consequently, "the Court properly identified the freedom-of-choice program in *Green* as a subterfuge." *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189, 221 (1973) (Powell, J. concurring and dissenting). If school board officials have the ready capability to alter racial composition of elementary or secondary schools, by manipulation of faculty and student assignment, *and nonetheless* maintain identifiable "black" and "white" schools, such schools stand as persuasive evidence that the school board actually intends to maintain segregation. It was such continuous, obvious and intentional efforts to maintain segregation that prompted *Green*. The Court showed impatience with a recalcitrant school board which refused to implement feasible and educationally sound measures to end state-imposed segregation in a two-school system. *Green* remains a classic example of

utilizing available and practical means to insure immediate integration of schools within an insular school district. It does not forbid any unlawful conduct other than intentional discrimination.

Indeed, Justice Scalia so explained *Green* and demonstrated *Bazemore's* plain applicability to noncompulsory, nonfree public higher education. Justice Scalia observed:

> Our analysis in *Basemore v. Friday* . . . reflected our unwillingness to conclude, *outside the context of school assignment*, that the continuing effects of prior discrimination can be equated with state maintenance of a discriminatory system. There we found both that the government's adoption of "wholly neutral admissions" policies for 4-H and Homemaker clubs sufficed to remedy its prior constitutional violation of maintaining segregated admissions, and that there were no further obligations to use racial reassignments to eliminate continuing effects – that is, any remaining all-black and all-white clubs. . . . "[H]owever sound *Green* may have been in the context of the public schools," we said "it has no application to this wholly different milieu."

City of Richmond v. J. A. Croson Company, 488 U.S. 469, 525 (1989) (Scalia, J. concurring) (emphasis added).

The foregoing demonstrates that private petitioners miss the mark when they deny "principled bases" exist on which to distinguish disestablishment of state-imposed segregation in higher education from elementary education.[29] They misconstrue the "restoration" of

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[29] The court of appeals properly observed that heeding the distinctions is not merely a matter of identifying the proper " 'means' of eliminating discrimination." (P.A. 23a-24a)

rights to which blacks today are entitled as the result of discriminatory practices of another era. Blacks have no constitutional right to choose predominantly black universities with resources comparable to predominantly white universities in order to be free of discrimination.[30] The position to which blacks are entitled is one of freely choosing which institution to attend and freely competing for admission without consideration of their race. Whites today enjoy no greater rights.

Petitioners further erroneously equate continued "racial identifiability" of universities at which genuine nondiscriminatory policies prevail to the "continuation" of the de jure system. There is no constitutional right to any particular racial mix or constitutional obligation to redress racial identifiability resulting from individual choice. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 434, 436 (1976). Racial identity alone is not unconstitutional even in elementary education. *Id.*; *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 24-26 (1971). *Bazemore* precludes private petitioners' ironclad presumption that past discrimination alone causes an unlawful present racial configuration.

Moreover, private petitioners' belated atten[illegible]at the end of their brief to distinguish *Bazemore* is unavailing. Their advancement here of purported "remedial possibilities" while none were allegedly urged in *Bazemore*

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[30] The court of appeals' opinion includes a devastating rejection of the notion of alleged institutional rights inherent in petitioners' resource contentions. (P.A. 28a, 37a) The district court's similar observations are equally poignant. (P.A. 190a-91a) The United States itself appropriately concedes there is no constitutional duty to correct institutional disparities or to expend efforts toward making the predominantly black universities "equal." (U.S. Brief at 32-33) Little else need be said.

skirts the threshold *liability* determination of whether a constitutional violation exists. The issue in *Bazemore* was clearly whether the implementation of nondiscriminatory policies was sufficient, not whether reasonable additional actions could be implemented to alter racial identifiability. Nor can *Bazemore* be avoided by asserting higher education is more important than extension clubs. *Bazemore* makes no constitutional differentiation according to perceived value of the state-sponsored activity and no other decision of this Court suggests such a sliding scale.[31] Petitioners' third purported basis for distinguishing *Bazemore* concedes applicability of the *Bazemore* legal standard and merely raises factual questions rejected by both lower courts.

The United States apparently feels obliged to differ with the court of appeals on the scope of Mississippi's duty. Unable to disavow *Bazemore* and aware of the inapplicability of *Green*, the United States disingenuously articulates its suggested hybrid standard: remove "remnants" which "fetter free choice by race." There is no factual basis whereby the United States can self-servingly ignore the court of appeals and district court findings that "real freedom of choice" exists. Genuine nondiscriminatory policies by their very definition do not impermissibly fetter choice by race.

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[31] The court of appeals properly identified this relativistic contention "as an improper 'hierarchy of values,' " and aptly described "such a hierarchy [as] purely subjective, impossible to apply, and not founded on the Constitution." (P.A. 23a)

There may be a case in which it would be appropriate to prohibit a state from, in fact, continuing to fetter choice by race. This is not such a case.[32]

To the extent the United States poses a different legal standard than the court of appeals, the Government necessarily misconstrues both *Bazemore* and *Green*. In the teeth of its own acknowledgment that the *Bazemore* standard centering upon the discontinuation of prior discrimination and adoption of race-neutral policies applies (U.S. Brief at 29), the United States asserts that something more is nonetheless required here to assure choice is not fettered by race. The Government draws on *Green* to impose an obligation beyond *Bazemore* to assure choice is "real" even though it acknowledges *Bazemore* specifically refused to so extend *Green* to a traditionally noncompulsory arena. Despite *Bazemore's* obvious preoccupation with nondiscriminatory admissions in a traditional "choice setting," the United States argues for a "collective" interpretation of *Bazemore* and *Green* based upon *Green's* understandable insistence that an atypical "freedom of choice" plan "merely begins the inquiry."[33] Such

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[32] Again, the district court examined the evidence on this basis: "While student enrollment and faculty and staff hiring patterns are to be examined, greater emphasis should instead be placed on current state higher education policies and practices in order to insure that such policies and practices are racially neutral, developed and implemented in good faith, and *do not substantially contribute to the continued racial identifiability of individual institutions.*" (P.A. 177a) (emphasis added).

[33] The district court's joint reading of *Green* and *Bazemore* far better explains their relative applicability: "The court perceives no inconsistency with respect to the Supreme Court decisions *Green* and *Bazemore* and the *ASTA* decision. These decisions stand in harmony for the proposition that the scope

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posturing by the Government over the significance of alleged "discriminatory effects" is not just inconsistent with Justice Scalia's authoritative interpretation of *Bazemore*. It is ultimately at odds with the Court's plain recognition that *Bazemore* holds the "mere existence of single-race clubs in [the] absence of *evidence of exclusion by race* cannot create a duty to integrate." *City of Richmond*, 488 U.S. at 503.

Similarly, the United States' concluding assertion that "the mandate of the Equal Protection Clause is met once [there is] no discriminatory *prompting* from the State" is wholly unsatisfactory. The Constitution, and *Bazemore*, of course say nothing about discriminatory "prompting." It is discrimination which is prohibited. If "prompting" is anything other than present intentional discrimination, any attempted judicial identification of it is particularly unwarranted in higher education. As emphasized by the court of appeals, "universities are not simply institutions for advanced education." (P.A. 23a) A purported identification of "prompting" invites judicial invasion into the whole array of "educational policy decisions in which courts should not become involved." *ASTA*, 289 F. Supp. at 788. *See Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 92 (1978) (courts being "particularly ill equipped to evaluate academic [decisions] warn[s] against judicial intrusion"). Particularly is this true when the uncontradicted record demonstrates some 15 years of

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of the affirmative duty to disestablish a former de jure segregated system of education is to be defined in accordance with the degree of choice individuals enjoy as to whether they wish to attend college at all and, if so, which one." (P.A. 175a)

genuine nondiscriminatory policies coupled with affirmative good-faith efforts to increase other-race presence.[34] The deference due even local elementary school boards requires courts not involve themselves in a wide range of higher education policy decisions absent compelling circumstances. *See, e.g., Board of Education v. Dowell,* 111 S.Ct. 630, 637-38 (1991); *Dayton Board of Education v. Brinkman,* 433 U.S. 406, 410 (1977).[35]

Stripped of all pretense, the United States' own assertion must be construed to acknowledge that the duty to disestablish is fulfilled by the cessation of prior discrimination and implementation of nondiscriminatory policies.[36] The record here overwhelmingly establishes State fulfillment of this legal duty.[37]

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[34] The State has acknowledged a duty to disestablish state-imposed segregation; it has not disputed that the duty initially arose without the necessity of petitioner proof of discriminatory purpose as the result of State maintenance of the de jure system. But even if *Bazemore* as construed by the State does not control, all actions throughout the 1970's and 1980's by altogether different boards and university officials do not bear a presumed discriminatory taint as the result of discriminatory acts of the 1950's and early 1960's. Such acts, or even failures to act, should not be evaluated absent consideration of evidence of purposeful discrimination. Certainly at some point in time after years of good-faith nondiscriminatory policies the causal nexus between state-imposed separation of the races and racial identifiability evaporates or becomes so attenuated as to require proof of present intentional discrimination. Otherwise, purported constitutional "remedies that are ageless in their reach into the past, and timeless in their ability to affect the future" improperly result. *Wygant v. Jackson Board of Education,* 476 U.S. 267, 276 (1986). *See Columbus Board of Education v. Penick,* 443 U.S. 449, 470-71 (1979) (Stewart, J., concurring and dissenting) (passage of time militates against shifting of normal burden of proof). Cf. *Dowell,* 111 S.Ct. at 637-38 (evaluation of good faith of school board over time). Such considerations make the United States' call for the elimination of discriminatory "prompting" all the more unsatisfactory and private petitioners' demand for the total restructuring of the system because of institutional differences even more intolerable.

[35] Similarly, First Amendment considerations are not irrelevant. Assuming of course the existence of nondiscriminatory polices, universities are to remain free "to determine on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Sweezy v. New Hampshire,* 354 U.S. 234, 263 (1956) (Frankfurter, J., concurring). *See Regents of the University of California v. Bakke,* 438 U.S. 265, 311-12 (1978) (academic freedom "long a special concern" of First Amendment). Nor should the Court wholly ignore First Amendment rights to freedom of association.

[36] Indeed, the United States was the major advocate of the position adopted by the Court in *Bazemore.* The United States urged rejection of *Green* because of the absence of state-dictated attendance. *Bazemore,* 478 U.S. at 416. Not surprisingly, shortly after *Bazemore* the United States is similarly on record in systemwide higher education desegregation litigation that "higher education is a voluntary activity [and] a state satisfies the Constitution by putting an end to discriminatory practices, and has no obligation to eliminate the vestiges of past discrimination." The United States specifically maintained "the state [has] no compelling interest in embarking on additional remedial action after it [has] established 'neutral admissions standards.' " *Geier v. Alexander,* 801 F.2d 799, 804 (6th Cir. 1986).

[37] The United States references Judge Higginbotham's special concurrence and dissent at the end of its brief. (U.S. Brief at 41) The Government alleges that if the lower courts had "answered the right question" they would have discovered "discriminatory remnants." Yet when the United States itself

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B. The district court's finding that the continued racial identifiability of Mississippi universities persists today as the result of free and unfettered choice of students and personnel is not clearly erroneous.

The district court scrutinized the substantial evidence of Mississippi's genuine nondiscriminatory polices accompanied by good-faith affirmative efforts to encourage integration. It found that such policies have been administered by a governing board which is 25% black and on which blacks have assumed leadership roles. (P.A. 166a-68a) It unhesitantly concluded that the State has implemented race-neutral polices and substantial affirmative efforts with respect to student admission and recruitment, faculty employment, and resource allocation. (P.A. 201a) The district court specifically found Mississippi students possessed a "free and unfettered choice" of a public university. (P.A. 187a) The *en banc* court of appeals

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writes the "question" it only purports to identify two alleged "remnants," neither of which can be properly characterized as vestiges as explained below.

Moreover, with all due respect Judge Higginbotham's reading of *Bazemore* is hollow. (P.A. 40a) It ignores the basis upon which this Court found genuine choice to exist despite widespread racial identifiability. *Bazemore* held the State had "discharged its duty to undo its wrong" by discontinuing prior discrimination and adopting race-neutral polices. Judge Higginbotham improperly suggests a timeless continuum of judicial evaluation of the "effects" of state action on continued racial identifiability not contemplated by *Bazemore*. (P.A. 42a) Judge Higginbotham also unjustly accuses the lower courts of "denying any notion of perpetuation." (P.A. 43a) Both lower courts found Mississippi's genuine nondiscriminatory policies do not contribute to any continued racial identifiability.

also weighed the record carefully in its affirmation of the district court. The appellate court likewise concluded "all students have real freedom of choice." (P.A. 2a, 27a) The United States does not challenge a single district court student enrollment or personnel employment factual finding concerning the genuineness and substantiality of State race-neutral and affirmative action policies apart from admission standards. Private petitioners likewise say nothing about student recruitment practices apart from their admission standards contentions.[38]

1. The nondiscriminatory, educationally reasonable current admission standards are not the cause of any continued racial identifiability of universities.

"The current admission policies and procedures, including the particular use to which the ACT assessment is put, were not adopted for racially discriminatory purposes and are reasonable, educationally sound, and racially neutral. . . . Although the various institutions continue to be identifiable by the racial makeup of the

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[38] Private petitioners do include within their shotgun attack, however, assertions concerning employment at the predominantly white universities and treatment of blacks at the University of Mississippi. Such contentions have received the attention of two courts. The compelling statistical evidence of affirmative action in the faculty hiring process and overall parity in the labor force together with abundant evidence of genuine substantial affirmative employment recruitment efforts are simply insurmountable. (*supra* at 16-18) The selected individual and for the most part unwarranted complaints at the University of Mississippi do not rise to any semblance of "official" action, particularly in light of the substantial evidence of university policy and efforts to the contrary. (*supra* at 10, n.6)

student populations, this is not a substantial result of current admission practices and procedures but is instead the result of a free and unfettered choice on the part of individual students." (P.A. 187a) These determinative district court factual findings are unassailable. The United States erroneously asserts, however, the Board's mid-1970's actions "only formalized" a 1961 discriminatory standard. Despite having been twice rejected, private petitioners still specifically allege intentional discrimination. Private petitioners' depiction of lower court evaluation of the State's 1976 and subsequent admission actions as "totally arbitrary" is, however, itself completely unfounded. The contention that just because the State's original use of the ACT long ago may have been rooted in discrimination mandates a finding that today's admission standards implemented under totally different circumstances are intentionally discriminatory is clearly wrong. Both lower courts satisfied *Hunter v. Underwood*, 471 U.S. 222 (1985), to the letter. (P.A. 32a-33a, 178a-85a)

Nor may the United States presumptuously depict the State's present use of the ACT as a "remnant" or "vestige" of the de jure system. The record and lower court findings belie any assumption that the ACT is used today because it was utilized in 1961. Indeed, the proof obliterated any causal nexus between present admission policies and those of the "Meredith era." Altogether different boards have confronted altogether different circumstances and acted for altogether different reasons. (T. 3550-75, J.A. 1717-29; P.A. 8a-9a, 179a; *supra* at 13-16) Whatever the definition of a "vestige" may be, where all substantive links are destroyed a present condition cannot be termed an impermissible "effect" of the distant unconstitutional past.

The United States' challenges of the present admission standards beyond its incorrect vestige characterization are equally erroneous. The record flatly contradicts any assumption that the presently lower admission standards at the predominantly black universities are responsible for their "racial identifiability." More white students receive ACT scores between 9 and 14 than black students. (*supra* at 15-16) Further, before taking the ACT, students indicate their college preferences or "choices"; black students do not on any statistically significant basis first choose to attend a predominantly white university and subsequently switch to a predominantly black university after scoring below 15. (T. 4225-32, J.A. 1857-61) Moreover, virtually all black applicants to the predominantly white universities are admitted.[39] (*supra* at 15)

Dothard v. Rawlinson does not dilute the significance of such proof. The "automatic admission" challenge is a very narrow one. It just applies to students scoring 13 or 14, for "automatic admission" results at the predominantly black universities only for students scoring 13 or above. (Exh. Bd-183A, J.A. 1188-95) The record precludes any inference that "self-recognized inability" to meet the automatic admission criteria, as contrasted with the

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[39] Private petitioners' allegations of inadequate publication of the exceptions policies are inconsequential. The three comprehensive universities set forth the exceptions policies in their university catalogs. (Exh. US-818 at 4, US-821 at 44, US-920 at 21) Delta State University, while omitting the "high risk" exception in its bulletin, affirmatively contacts each student scoring below 15 who expressed an interest in the university before taking the ACT. (Exh. US-967 at 66-69, J.A. 800-02) Private petitioners' assertion of course ignores the thousands of students admitted since 1977 with scores below 15. (Exh. Bd-173, Bd-174)

overall admission standards, contributed to alleged disproportionate failure of blacks to apply to the predominantly white universities. Thousands of students have been admitted to all eight universities over the years under exceptions to "automatic" admission polices. Private petitioners similarly attribute the failure to apply to students taking the ACT more than once. To the extent such speculation is even entertained, students obviously take the ACT again to achieve a higher score, and there is no basis to infer that the level of the first score, particularly the 13 or 14, discourages application to a predominantly white university.[40]

Petitioner criticism of the exceptions to the threshold admissions requirements as "limited" is also misplaced.

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[40] No inference of discrimination can be drawn from the present existence of different test score requirements at the predominantly black and predominantly white universities. Apart from the proof that score requirements are not responsible for racial identifiability, petitioners ignore where predominantly black universities once stood and the dramatic progress made to date. The Board elected at the time of initial implementation in 1976 not to require the otherwise patently reasonable 15 because it posed a substantial risk of catastrophic decimation of *then existing* student enrollment at the predominantly black universities. At the same time, however, the Board and universities immediately moved toward the necessary increase in admission standards. Alcorn State University moved in steps from the 9 to a 13 and though not yet achieved once projected a 15. The Board's 1981 mission statement specifically emphasizes the necessity that Jackson State University decrease participation by "marginal students"; Jackson State University has gradually moved from the 9 to a 13 with projections of moving still higher. Mississippi Valley State University has moved from the 9 to a 13. (P.A. 123a-25a; T. 3564-66; Exh. Bd-179, Bd-274; Exh. US-849, US-851, US-852, US-960 at 102-10, 113-114, US-961 at 89-90)

First, the United States bases its contention upon its erroneous "remnant" characterization of the present admission policies. Second, the attack advocates admission of substantially greater numbers of students scoring below the indisputably modest 15. Yet this assertion runs directly contrary to the recognized justification for the 1976 adoption of the 15 in the first place. An adoption of the 15 did not alleviate university problems with poorly prepared students. Universities should be permitted to be universities. Courts should not nullify the modest "certification of credentials" represented by the 15.[41] (*supra* at 11-16)

The misleading contentions that a standard for automatic admissions incorporating both high school grades and the ACT would better serve the State's interests are also incorrect. The mere prediction of a probability that students with low ACT scores may obtain a passing grade is not the total educational picture.[42] Mere passage in college does not insure quality graduates or productive citizens. The level of university instruction being afforded has been a constant issue. Utilizing present

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[41] Amazingly, private petitioners even challenge the State's use of an ACT score of 9. The State does not argue that students at such a low level of academic development may not one day be highly productive citizens. Yet it should go without saying that students at such low levels are not presently prepared for university level instruction.

[42] It also should be recognized that there is no assertion that the ACT is "racially biased." Petitioners' own expert acknowledged it is "well known" the ACT predicts as accurately for blacks as for whites; ACT's comprehensive research is to the same effect. (T. 1931; Exh. Bd-189) It is undisputed that the ACT is a reasonable measure of the test taker's, whether black or white, present level of academic development.

student performance in college as the only basis for evaluating admission standards would be a circuitous exercise precluding any student quality improvement. The Board and Mississippi citizens have a substantial, legitimate educational interest in continually striving toward raising educational expectations at every stage of the process as mandated by the Department of Education's *Nation at Risk: The Imperative for Educational Reform*.[43] (*supra* at 16)

Moreover, the "success" of ill-prepared students reflects the universities' efforts – and expenditure of resources – to retain every student who enrolls. Low achieving students are carefully selected based upon multiple cognitive and noncognitive criteria. They then receive inordinate attention through costly remedial and developmental programs. Even though the record indicates such actual enrollment would not occur, admission of any appreciable number of students with ACT scores below 15 would necessitate substantial remedial education. Again, it plainly is not educationally feasible or desirable for universities, particularly the major doctoral universities, to maintain such expensive programs on a widespread basis.[44] (P.A. 124a; *supra* at 14)

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[43] Further, the State's data correlating ACT scores and freshman grade point averages indicates that ACT scores greater than 15 are needed at the comprehensive universities for there to be a genuine probability of obtaining the modest 2.0 grade average. (Exh. Bd-275; Exh. US-900a, 900d, 900l, 900m, 900n)

[44] This reality is of course also true for the predominantly black universities. As previously recognized, the commitment there is to raise the ACT standards. The problem should not be compounded by a lowering at the predominantly white universities.

Nor is petitioners' suggestion that a less discriminatory, more effective admission standard can be feasibly implemented supported by petitioners' own proof. The global assertion that other states use grades is certainly not sufficient.[45] Petitioners' testing expert declined to enter the real world of actual admissions policies preferring instead to criticize unreasonably any use of a "cut score." He never broached the ultimate issue of educational reasonableness of the admissions standards. Such consideration by his own admission "gets into a lot of other things." (T. 1921-28)[46]

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[45] States that use grades no doubt generally combine relatively high grades with such modest scores as a 15, if such low achieving students are automatically admitted at all. (T. 328-31) Mississippi should not be penalized for having no grade average requirement. Indeed, petitioners' own witness Dr. Elias Blake, president of the predominantly black Clark College and an active spokesman in higher education desegregation litigation, testified to utilization of the SAT equivalent of a 15 *and* a 2.0 grade average to define the "automatic" admission pool at his institution. (T. 2053-54, J.A. 1551-52) *See* College Entrance Examination Board, *The College Handbook 1991*, 28th Ed. (*e.g.*, historically black Florida Agricultural and Mechanical, 19 ACT (or 900 SAT) *and* 2.5 high school GPA; Florida State University, 25 ACT (or SAT of 1040)).

[46] The United States' hypothetical suggestion is in any event of no practical significance in Mississippi. As discussed above, students scoring as low as 9 are already eligible for admission. Grades and other criteria are already being used. Any emphasis upon "automatic" as opposed to exceptional admission is illusory. Nor should petitioners be heard to argue

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Ultimately it must be recognized that blacks disproportionately qualify for admission to universities because they disproportionately appear at lower levels of academic development upon graduation from high school. This regrettable circumstance cannot be laid, however, at the doorstep of public higher education. The socioeconomic causes are multifaceted. Attempting to remedy these causes here would erroneously far exceed the scope of the alleged constitutional violation of respondents in this proceeding. *E.g., Milliken v. Bradley,* 433 U.S. 267, 282 (1977). A higher education system is under no legal obligation to "compensate" for infirmities at the elementary and secondary school levels or for other circumstances beyond its reasonable control. *United States v. LULAC,* 793 F.2d 636, 649 (5th Cir. 1986).[47]

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that use of a lower ACT would not constitute a lowering of standards. The developmental education probabilities have been noted. Petitioners themselves relied upon the ACT scores of students enrolled as a major criterion of institutional quality. (T. 131, J.A. 1321) Students, parents, educators, employers and the public at large unquestionably view them no differently.

[47] It is not insignificant, however, that the State does provide additional educational opportunities for the high school graduate not yet academically prepared for a university experience. More students attend the junior colleges than the universities. As many students transfer from the junior colleges to predominantly white University of Southern Mississippi as enroll as first time freshmen and Delta State University's junior class is substantially larger than its freshman class due to transfers, including significant numbers of students from a predominantly black junior college. The other universities recruit the junior colleges as well. (*supra* at 12) The district court understandably found that the transfer procedure is "not unreasonable or unduly burdensome." (P.A. 133a)

2. The educationally reasonable assignment of missions and allocation of resources are not the cause of any continued racial identifiability of the universities.

The importance and prevalence of diversity in higher education are undisputed. The educational reasonableness of the present missions of Mississippi's eight universities is not contested. Jackson State University's status as the State's only urban university possessed of a more comprehensive mission than either Delta State University or Mississippi University for Women is conceded. Private petitioners cannot dispute the absence of any racial correlation in resources among Alcorn State University, Delta State University, Mississippi University for Women, and Mississippi Valley State University, the State's four regional universities. (*supra* at 20-21, 27) The relative underfunding of the State's three comprehensive, predominantly white universities, when compared to other states' comprehensive universities, is uncontroverted. The relative overfunding of the States's noncomprehensive universities, three of which are predominantly black, on a peer basis is likewise unchallenged. (*supra* at 22)

Nonetheless, petitioners still maintain an unlawful correlation exists between racial identifiability and resources. The State disputes altogether the relevance of institutional differences in a statewide system of public higher education which maintains genuine nondiscriminatory admissions and operational policies. (*supra* at 41-42) But if relevant, this controversy does not focus upon whether students in some measure select a university based upon anticipated program of study or even according to physical facilities. Rather, the threshold question is whether the State's allocation of institutional resources *causes* present institutional racial identifiability. Even a *Green* approach

to higher education would require some showing that the addition or reallocation of resources offers a realistic and meaningful prospect of altering racial identifiability. No such showing exists on this record.

Private petitioners, but not the United States, purport to rationalize their challenge of resource allocations to the predominantly black universities with two hypotheses: (i) the alleged deficient resources inhibit desegregation; and (ii) the alleged inadequate resources deprive blacks at these institutions of equal educational opportunities. The first assertion is essentially that the predominantly black universities are predominantly black today because of resources. The supposition is that substantial institutional enhancement would materially alter the present racial identifiability of the predominantly black universities. Yet there is no demonstrable relationship in this record between resources and racial presence. There is no basis to infer that institutional resources affect blacks' choices any differently than they do whites' choices or vice-versa.[48]

Private petitioners' allegations of denial of "equal educational opportunity" arise from fundamental misapprehensions of the term's meaning in the context of public higher education. Petitioners define equal educational opportunity not just in the context of uniformly available alternatives but rather according to perceived benefits derived *after* the exercise of choice. Petitioners approach equal educational opportunity not simply in the context

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[48] Louisiana's experience likewise irrefutably demonstrates the total fallacy in the assertion that enhancement of the predominantly black institutions offers any hope of a material change in racial composition. (Brief Amici Curiae Charles E. "Buddy" Roemer, III, et al. at 20-24)

of participation in the statewide system but according to privileges available at the particular institutions selected. "Differences" in institutional resources may result in a "different" educational experience just as a host of non-resource factors may affect the educational experience. The experience at a smaller university may be better or worse than at a larger university. (*See* Exh. Bd-459, J.A. 1284-85) It is incongruous indeed for plaintiffs to even suggest that after a student makes his or her choice the student may constitutionally expect "the same" programs and facilities available at another university which would have been received had he or she first elected to attend the other institution. Petitioners are obviously asserting a nonexistent constitutional right.

Further, petitioners' "equality of opportunity" argument, when even modestly extended, yields absurd results. For example, the students at predominantly white Delta State University and Mississippi University for Women under such an approach are subjected to "unequal educational opportunities" as contrasted with those students not just at the predominantly white comprehensive universities but also at predominantly black Jackson State University. Students at predominantly black Jackson State University are simultaneously "preferentially treated" vis-a-vis predominantly white Delta State University and Mississippi University for Women but "discriminated against" when compared to the predominantly white comprehensive universities. Substantial numbers of blacks of course attend the "resource superior" predominantly white comprehensive universities and benefit from the same alleged institutional favoritism which allegedly "discriminates against" other black students who attend the predominantly black universities.

What petitioners obviously have done is stand the salutary principle of diversity in higher education on its head.

The United States' challenge of the allocation of resources focuses solely upon allegations of "unnecessary program duplication." It again invokes its own four-part "remnant" analysis in contending allegedly unnecessary program duplication impermissibly perpetuates segregation. The mere suggestion that the elimination of "unnecessary program duplication" will materially alter racial identifiability is meritless. The present program structure in Mississippi does not impermissibly fetter choice by race, and the United States' purported analysis is deficient in every respect.

The United States again makes an unwarranted assumption concerning what constitutes a vestige of state-imposed segregation in higher education. It advances the beguiling notion that program "duplication" was a central element in the de jure system to then argue continued duplication is a remnant of the past. This assertion distorts the threshold constitutional violation. It was not the "equality" of universities, to the extent it even arguably existed, that *Brown* struck down. Rather, it was of course the state-imposed separation of the races that *Brown* condemned. The blanket inference that program duplication today is a "vestige," or "remnant," is no more appropriate than depicting the universities themselves as vestiges for elimination.

Particularly is this true on this record. It is undisputed that no pattern of "unnecessary program duplication," even as illogically defined by petitioners, exists premised upon the racial identifiability of universities. Indeed, the three predominantly black universities are actually duplicated less than any other group of three noncomprehensive universities. (*supra* at 26) Where the

program duplication among predominantly white universities is similar to, or even greater than, that between predominantly white and predominantly black universities, no substantive link to the former dual system can be inferred.

Likewise, the United States' assertion that State tolerance of duplicative programs sends a message affecting choice by race is unfounded. The availability of duplicative program choices among comprehensive and noncomprehensive universities situated throughout the State, regardless of racial characteristics, sends no racial message. Moreover, there is no credibie proof of even the alleged extent to which unnecessary program duplication supposedly impedes desegregation. The United States does not challenge program duplication in the core arts and sciences. The import of the United States' utterly unrealistic definition of "unnecessary" program duplication also must be recognized: virtually all of the alleged unnecessary program duplication between the predominantly black and predominantly white universities is in the areas of business and education. (Exh. US-482, Tables 2 & 4, J.A. 221-39; T. 274-77, J.A. 1338-39) It is patently unreasonable to suggest that universities in the 1990's must wholly abandon such disciplines, *i.e.*, not offer a *single* business or education course, to avoid "unnecessary" duplication.[49] *See* Exh. Bd-263 Chapter II at 4-5, 8-9

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[49] The United States' assertion that program duplication at off-campus centers maintains racial identifiability is wrong. The State long ago mooted allegations that it perpetuated such "duality," so much so that the United States selectively limited its off-campus proof to the pre-1981 period. (P.A. 146a-50a; *supra* at 28, n.22) Yet the comprehensive universities' virtual abandonment of the challenged degree-granting centers has not yielded an appreciable increase in white enrollment at Jackson State University or Alcorn State University.

(explaining educational reasons for business and education "duplication" in Mississippi).

The United States misconstrues the district court's findings concerning unnecessary program duplication. The district court did state at one point that "unnecessary program duplication by Delta State and Mississippi Valley State . . . cannot be justified economically or in terms of providing quality education," (P.A. 146a) but such language does not warrant the United States' characterization of the judicial finding as "program duplication serves no useful educational purpose." (U.S.Brief at 40) The bases for the district court's findings of unnecessary program duplication must be heeded. "In assessing the amount of unnecessary program duplication," the district court first carefully stated its findings "disregard[ed] institutional mission and demand for programs." (P.A. 144a) The district court thereby acknowledged that program existence may be fundamental to institutional integrity even though it duplicates programs elsewhere.[50] Thus, the district court's comments reflect a more general concern regarding the number of universities, predominantly white and predominately black, competing for scarce resources. (P.A. 200a)[51] Indeed, the

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[50] This critical finding is obviously not clearly erroneous as the United States made no pretense of approaching the issue from this essential educational perspective. (*supra* at 25-26) The State, however, did offer such proof confirming efforts to reduce all educational unnecessary program duplication to the extent educationally feasible. (*supra* at 23-24)

[51] Of course no party seeks and the Constitution does not require closure of any institution. As already emphasized, however, such a complicated educational and *political* issue does manifest the necessity of full applicability of *Bazemore* to public higher education. It strongly counsels against judicial

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district court otherwise specifically concluded with respect to program duplication that "there is no proof that the elimination of unnecessary program duplication would be justifiable from an educational standpoint or that its elimination would have a substantial effect on student choice." The district court further similarly found "there is no showing in this case that the elimination of unnecessary programs within the system of higher education in Mississippi would be feasible, educationally reasonable, or would offer any hope of substantial impact on student choice." (P.A. 194a)

Finally, it is amazing that the United States, not even having attempted to prove it, suggests that elimination of "unnecessary program duplication" in Mississippi would have an effect on the alleged racial identifiability of universities. Educational opportunities, public and *private*, are simply too diverse to entertain the fiction that elimination or merger of the relatively few arguably "nonessential" programs will have any material desegregative result. The district court correctly observed that "the experience of other courts assessing the relative impact of the elimination of unnecessary programs between historically white and historically black institutions indicates that elimination of such programs would have little impact."[52] (P.A. 194a)

(Continued from previous page)

involvement in those questions which should be debated in the public domain outside the jurisdiction of "ill-equipped" courts. (*supra* at 45-47)

[52] *See Artis v. Board of Regents*, No. CV 479-251 at 9 (S.D. Ga. Feb. 2, 1981) (racially identifiable institutions in same city but over 80% of affected students still went elsewhere); *Report on Success of Merger of University of Tennessee at Nashville and Tennessee State University* (Brief Amici Curiae Charles E. "Buddy" Roemer, III, et al. at 27a-34a) (merger ordered, due to failure of joint, cooperative, and exclusive program planning, itself unsuccessful; *see Geier v. Blanton*, 427 F. Supp. 644, 654-56 (M.D. Tenn. 1977)).

II. The duty to disestablish state-imposed segregation in higher education is no greater under Title VI than under the Constitution. In any event the State of Mississippi has fulfilled any alleged greater duty under Title VI through the adoption and years of implementation of genuine nondiscriminatory policies coupled with substantial affirmative efforts to promote desegregation.

It is undisputed that Title VI of the Civil Rights Act of 1964 "proscribes only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment."[53] *University of California Regents v. Bakke*, 438 U.S. 265, 287 (1978). *See Alexander v. Choate*, 469 U.S. 287, 292-93 (1985). Consequently, "proof of invidious purpose is a necessary component of a valid Title VI claim." *Guardians Association v. Civil Service Commission of City of New York*, 463 U.S. 582, 642 (1983) (Stevens, J. dissenting). This same standard applies to petitioners' assertions of the Department of Education Title VI regulation, 34 C.F.R. § 100.3(b)(6)(i).[54] An administrative agency may not promulgate regulations that "go *beyond* the purpose" of the enabling statute. *Guardians*, 463 U.S. at 613 (O'Connor, J. concurring). As already explained, any evaluation of the alleged presence of "effects of prior discrimination" must

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[53] The United States specifically states "Mississippi's obligation to dismantle its racially dual system of higher education is the same under both Title VI and the Equal Protection Clause." (U.S. Brief at 42) Apart from contending the asserted regulation was "promulgated pursuant to 42 U.S.C. § 2000d-1," private petitioners never cite the statute.

[54] The United States argues that this same Constitutional standard requires "affirmative steps to remove remnants." Private petitioners maintain that this regulation requires not just admission policy changes but substantial institutional enhancement of the predominantly black universities.

consider first whether evidence exists of present maintenance of a discriminatory system.[55]

The court of appeals correctly concluded *Bazemore* controls the Title VI inquiry. (P.A. 26a) Despite the continued existence of single-race clubs, the State's efforts in *Bazemore* satisfied affirmative action demands of regulations. 478 U.S. at 408-09. The "affirmative action" regulation considered in *Bazemore* is identical to the one cited by petitioners:

> In administering a program in which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

Compare 7 C.F.R. § 15.3(b)(6)(i), quoted in *Bazemore*, 478 U.S. at 412, with 34 C.F.R. § 100.3(b)(6)(i), cited in petitioners' briefs. The Court specifically held that the State's "affirmative action to change its policy and to establish what is concededly a nondiscriminatory admissions system" satisfied the regulation. 478 U.S. at 409. Stated differently, the Court held the State met its regulatory duty

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[55] Justice O'Connor's specific view in *Guardians* that the Title VI regulations, like the statutes, "proscribe only purposeful discrimination" was admittedly not the opinion of a majority of the Court. Justice O'Connor's opinion was shared, however, by then Chief Justice Burger, Justice Powell, and Chief Justice Rehnquist. More importantly, *Guardians* did not address the particular regulation or issue before this Court. A regulation requiring a particular degree of racial mixing would be inconsistent with the Constitution and beyond regulatory bounds. The imposition of an affirmative duty to act according to race absent a showing of present intentional discrimination, or even present state actions which materially contribute to racial separation, cannot be said to "reasonably further the purposes" of the statute "proscribing only intentional discrimination."

by implementing good-faith, race-neutral policies and procedures which both lower courts here have found prevail in Mississippi. Clearly, the Court concluded the regulation imposed no burden upon the State to change choice or actively promote integration beyond the implementation of genuine nondiscriminatory policies.

The United States necessarily agrees. After all, it was the Government's position of "full regulatory compliance" that the Court adopted in *Bazemore*. Nonetheless, the United States reargues its "remnant" contentions. It contends that "while the adoption of a nondiscriminatory admission policy is sufficient to 'overcome the effects of prior discrimination' in the context of 4-H Clubs, more may be required" here in public higher education. The United States specifically identifies no unlawful continuing "effects." Presumably it is the State's present admission standards and alleged unnecessarily duplicative programs which allegedly constitute "effects of prior discrimination."

Yet this United States position requires no exploration of the scope of "affirmative action" required under the regulation. As already explained, neither the present admission standards nor the alleged unnecessary program duplication are "*effects of* prior discrimination." The "prior discrimination" in issue in this proceeding is the segregated de jure system of higher education. The record will not permit a conclusion that the State's present use of the ACT or tolerance of duplicative programs is an "effect" of the separatist policies of that distant era.

Nor is any continued racial identifiability of universities an "effect" requiring the State to do more than it has done. The record establishes that the admission policies do not contribute to institutional racial identifiability. (*supra* at 14-16) There is no proof of any educationally

justified program termination, consolidation or transfer which would materially alter racial identifiability. (P.A. 193a-94a) The United States concedes that the institutional enhancement of predominantly black universities will contribute nothing to, and may indeed detract from, any alteration of racial identifiability. (U.S. Brief at 32-33) The district court's factual findings that the State has "undertaken substantial affirmative efforts in the areas of other-race student and faculty-staff recruitment and funding and facility allocation" are not clearly erroneous. The same issue of racial identifiability as an "effect of prior discrimination" existed in *Bazemore*. Since the relatively nominal efforts in *Bazemore* complied with this regulation, Mississippi's multi-million dollar affirmative action programs plainly cannot be assailed.[56]

Private petitioners argue for a far broader reading of the regulation than does the United States. Thus, they again seek relief precluded by *Bazemore*. *Bazemore* does not even suggest that the regulations require, or even permit, the manipulation of resources with no educational justification and little likelihood of changed racial mixes. *Bazemore's* finding of no discrimination in services does not remotely imply that distinctions in resources among universities constitutes "discrimination" or a remediable "effect." Private petitioners' procrustean

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[56] The United States' reference to the "Revised Criteria" is meaningless. They are by the United States' own admission not binding. Moreover, they are not informative; they materially conflict with much of the United States' present position; they are even of questionable origin. *See* Brief Amici Curiae of Charles E. "Buddy" Roemer, III, et al. at 24-30. Furthermore, even now the United States does not attempt to explain what it is the Criteria allegedly require beyond genuine nondiscriminatory policies.

"results oriented" approach is clearly not contemplated. Likewise as in *Bazemore*, the interpretation of the United States, though itself erroneous, nonetheless precludes private petitioners' unduly expansive reading.[57]

Furthermore, nothing in *Bazemore* suggests "affirmative efforts" were undertaken there to the extent they have been here. The district court's analysis of the evidence went far beyond the mere confirmation of State

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[57] While disputing *Bazemore's* general applicability private petitioners do not specifically argue that *Bazemore's* delineation of the regulatory duty is inapplicable here. Recognizing, however, the conclusive effect of *Bazemore*, Amici Curiae NAACP Legal Defense and Educational Fund, Inc., et al. attempt to distinguish *Bazemore* on the facts. While the factual situations obviously differ, *Bazemore* cannot be "factually distinguished."

In their flight from *Bazemore*, Amici NAACP grossly distort the purported distinctions. It is only 20% of black students (those with ACT scores below 9) that are automatically denied access to a university, both predominantly black and predominantly white. It is frivolous to suggest that *Bazemore* addressed something other than widespread "racial identifiability"; "when judgment was entered there were a *great many* all-white and all-black clubs." 478 U.S. at 407. Actually in Mississippi the State is "statistically" approaching at least four racially mixed institutions, albeit majority white. Like *Bazemore*, the district court here found "no evidence of discrimination." While a laudable social objective shared by the State, "participation rates" are ultimately of no relevance in a nondiscriminatory system. Higher education is not just noncompulsory; it is not free, the students' level of academic development is critical, and a wide variety of other factors beyond the control of higher education affect whether a student will attend a university. The suggestion of additional remedial measures here is itself unfounded. In any event *Bazemore* did not suggest that nothing else could arguably be done to attempt to alter racial identifiability; the Court held nothing further was required. *Bazemore* in no way implied any improper floating standard dependent upon the relative importance of the State activity.

adherence to the *Bazemore* standard through discontinuation of prior discriminatory admission practices and the adoption of a "wholly neutral admissions policy." It made extensive factual findings addressing motive, effect, and the availability of educationally reasonable alternatives concerning student admissions and recruitment, faculty and staff employment efforts, and resource allocation practices. *Bazemore* cites no "affirmative action" findings that approach those existing here.[58]

Thus, the court of appeals' comments regarding fulfillment of any expanded duty are instructive. The court stated: "Under the present record we are not prepared to say the defendants have failed to meet the duties outlined in the regulations." (P.A. 26a) "[W]e would be reluctant to say the defendants have not met their duty even under *Green*." (P.A. 34a) Indeed, what this record reveals as portrayed by the evidence, and confirmed by the district court's extensive findings, is that the State of Mississippi

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[58] The district court's now familiar findings could not be more explicit. The State has used "every reasonable means" in student recruitment (P.A. 187a); there are no additional faculty and staff recruitment procedures available for State implementation which offer any meaningful prospect of greater minority presence (P.A. 199a); there is no feasible, educationally reasonable means of further reducing program duplication which "would offer any hope of substantial impact on student choice" (P.A. 194a); physical facilities appropriations disproportionately favor the predominantly black universities over the past 15 years and no racial institutional pattern exists concerning either the amount or condition of facility space (P.A. 195a); institutional funding differences are educationally based and unrelated to race except to the significant extent the predominantly black institutions have actually been favored (P.A. 161a-62a, 196a); and the continued racial identifiability of the universities is "the result of a free and unfettered choice on the part of individual students." (P.A. 187a)

has fulfilled its duty to disestablish under *Bazemore*, *Brown*, *Green*, Title VI, and the Title VI regulation.

CONCLUSION

This controversy concerns the extent to which the judiciary should inject itself into the wide range of higher educational policy decisions in order to dictate further integration with little prospect that institutional racial identifiability will be materially altered. This case comes to the Court almost 30 years after the admission of the first black student to a formerly all white university. It comes over 15 years after its filing in the district court. It comes under factual circumstances dramatically different from those existing in the era which spawned the litigation. The record reveals a new day in public higher education in Mississippi. The distant unconstitutional past does not justify judicial usurpation of the inherently sensitive, profoundly important realm of higher educational policy.

The judgment below should be affirmed.

Respectfully submitted,

MIKE MOORE
Attorney General
State of Mississippi
P.O. Box 220
Jackson, Mississippi 39205

WILLIAM F. GOODMAN, JR.
(Counsel of Record)
PAUL H. STEPHENSON, III
WILLIAM F. RAY
Special Assistant
Attorneys General
P.O. Box 650
Jackson, Mississippi 39205

Counsel for Respondents

(14)

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In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.

JAKE AYERS, JR., ET AL., PETITIONERS

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

The issue in this case is whether the State of Mississippi has satisfied its constitutional obligation to dismantle its racially dual system of higher education. The resolution of that issue turns on this Court's articulation of the appropriate dismantlement standard. We submitted in our opening brief that a State fulfills its obligation to dismantle a dual system of higher education only when a student applicant's choice of which college to attend is "wholly

voluntary and unfettered" by state action based on race. *Bazemore* v. *Friday*, 478 U.S. 385, 407 (1986). We further explained that simply saying that free choice exists does not necessarily make it so. *Green* v. *County School Bd.*, 391 U.S. 430 (1968). A State must not only adopt policies that are race-neutral on their face, but must also eliminate those continuing elements of its former system that perpetuate segregation by fettering free choice. This was the position of the United States in *Bazemore* v. *Friday*, *supra*, and it remains the position of the United States in this case. See U.S. Br. 31 n.30. Respondents, in sharp contrast, argue that far less is required.

1. Respondents proclaim that the record "reveals a new day in public higher education in Mississippi." Resp. Br. 70. The district court's specific factual findings present, however, a starkly different picture. Despite the nearly 40 years that have passed since this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), more than 99% of the white students attend the five historically white schools, which have superior programs and resources, and student compositions ranging from 80% to 91% white. Pet. App. 50a-51a, 60a-61a, 68a. Meanwhile, more than 71% of the black students attend the three historically black schools, which have objectively inferior programs and resources, and student compositions ranging from 92% to 99% black. *Ibid.* See U.S. Br. 8-14. Notwithstanding respondents' self-congratulatory bravado, the objective racial characteristics of Mississippi's system of higher education have changed little since this Court's decision in *Brown*. Statistics alone do not make out a constitutional violation, but these facts strongly suggest not that a new day has dawned in Mississippi higher education, but that the State has not succeeded in disestablishing its formerly de jure dual system.

We make that observation simply to set the record straight. At bottom, respondents' characterizations of the record are beside the point. This case is before the Court on a question of law. The issue is whether the courts below employed the correct legal standard in determining whether Mississippi has dismantled its racially dual system of higher education. If, as we believe, the lower courts employed an incorrect legal standard, then the judgment below must be vacated and the case remanded for further proceedings.

2. Once the rhetoric is stripped away, the core of respondents' legal position is plain: "Mississippi's existing system is constitutional because there is no evidence of present intentional discrimination." Resp. Br. 34. In respondents' view, once a State announces facially race-neutral policies and practices, its constitutional duty to disestablish its racially dual system of higher education comes to an end. Resp. Br. 36-47. Not so. The State must also address those remnants of its de jure system that have the effect of perpetuating segregation.

Respondents acknowledge that Mississippi is under an obligation, originating in *Brown*, to *dismantle* its racially dual university system. Resp. Br. 37. See also Pet. App. 13a. Adoption of race-neutral policies and practices is an important and indispensable first step, but it does not complete the process. The reason is obvious. A State does not dismantle a system of de jure segregation by merely taking down signs saying "Whites Only" and "Blacks Only" if it leaves in place remnants from the de jure era, that, in effect, direct whites to the formerly white facilities and blacks to the formerly black facilities. The State has

an obligation to remove such barriers and channeling practices as part of the dismantlement effort because they are remnants of the former dual system and serve no substantial purpose except to perpetuate segregation. Cf. *Hunter* v. *Underwood*, 471 U.S. 222, 233 (1985) (invalidating a state constitutional provision on the ground that "its original enactment was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect"). It is no answer that the State has made some "affirmative" efforts to attract "other-race" applicants. Resp. Br. 7-10 nn.5-6. Those efforts (which respondents overstate) are of no moment if the State at the same time keeps in place practices and policies that perpetuate segregation.

This Court's school desegregation decisions reflect the principle we advocate. They recognize that neutrality is not enough. In addition, the vestiges or remnants of past discrimination must be eliminated to the extent practicable. *Board of Education* v. *Dowell*, 111 S. Ct. 630, 638 (1991). The Court's decision in *Bazemore* refines that concept by recognizing that where attendance is a matter of informed choice, the dismantlement effort must concentrate on those elements of the dual system that fetter choice. Thus, *Bazemore* focuses the inquiry, but it does not change the basic legal standard. A State remains under an obligation to eliminate those remnants of prior de jure discrimination that restrict an individual's free choice on the basis of race.

Respondents contend (Br. 44) that the United States "necessarily misconstrues" *Bazemore*. Respondents, however, are unable to point to any inconsistency between our submission here and this Court's decision in that case. This Court has never

said that a State automatically satisfies its dismantlement obligation by the mere adoption of race-neutral policies and practices. Indeed, the United States, which was the prevailing party in *Bazemore*, specifically emphasized the principle that we assert here in its brief to the Court in that case:

> This is not to say that a voluntary attendance system is unitary with respect to admissions because the state entity simply announces that it will henceforth conduct admissions without regard to race. Rather, such a formerly segregated government program is unitary only if the state has, in fact, established an admissions "system in which racial discrimination [is] eliminated root and branch." *Green*, 391 U.S. at 438. Thus, the relevant program must be free from all practices that either indicate that the program is not genuinely open to all free from subtle discrimination or that otherwise create further racial separation.

U.S. Br. at 43, in *Bazemore* v. *Friday*, Nos. 85-93 and 85-428 (O.T. 1985). That problem was merely theoretical in *Bazemore*, because neither the United States nor the private petitioners contended that the state authorities had "engaged in any action that had a segregative effect." *Id.* at 44. See *Bazemore*, 478 U.S. at 407-408. Hence, there was no occasion for the Court specifically to address that matter. This case, by contrast, presents that problem in concrete form. We have argued throughout this litigation that while Mississippi has announced a race-neutral admissions policy, it has retained elements of its prior system that perpetuate racial segregation.

The legal standard that the lower courts applied and respondents defend fails to take account of that problem. Under respondents' theory, a State may

retain elements of its past dual system that effectively promote segregation, provided that there is no "evidence of present intentional discrimination." Resp. Br. 34, 38. The defect in that approach is apparent: The State engaged in unconstitutional intentional discrimination when it established its racially dual system, and the dismantlement standard must be directed to correcting *that* constitutional violation. Under respondents' theory, the State need not discontinue the past segregative practices that were cultivated under the de jure dual system. Instead, the State need only disavow a present racial intent. Respondents' standard shifts the focus away from the question whether the State has effectively dismantled its racially dual system, and concentrates attention on the search for current racial animus. Under their approach, the State's dismantlement obligation would become a matter of form, rather than substance.

We submit that the proper objective in the State's dismantlement efforts must be to secure real freedom of choice for all college applicants. Mere proclamations do not suffice. As Judge Higginbotham explained:

> When a system of higher education presents every person with a truly equal and free choice among schools, that system will be constitutional. Well and good, but the long years of separatism have worn deep traces—so deep that declarations of freedom of choice draped over them are not so easily translated to real choice.

Pet. App. 41a. Thus, the court must look beyond such declarations to the actual functioning of the admissions process—including to whether the State has retained elements of its former system that fetter

free choice on the basis of race and thereby perpetuate segregation.

In the end, respondents are unable to offer *any* reason why a State should be entitled to retain elements of its formerly de jure system that, regardless of the State's intent, serve only to segregate. Indeed, they ultimately concede that "[t]here may be a case in which it would be appropriate to prohibit a state from, in fact, continuing to fetter choice by race." Resp. Br. 44. They simply assert that "[t]his is not such a case." *Ibid.* That assertion, however, can be tested only through actual *application* of the correct legal standard—it does not excuse the district court's failure to consider the United States' evidence under the appropriate legal test.

3. The court of appeals' decision must be set aside for the straightforward reason that it affirmed the district court's use of an incorrect legal standard in evaluating the evidence adduced at trial. The United States is entitled to have its evidence evaluated under the correct legal criteria. Hence, the case should be remanded for further proceedings consistent with this Court's articulation of the governing law. See, *e.g.*, *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986); *United States Postal Service Board of Governors* v. *Aikens*, 460 U.S. 711, 717 (1983).

Respondents contend that the judgment should be salvaged on the theory that the district court said that Mississippi allowed "free and unfettered choice" and that finding is sustainable under the "clearly erroneous" standard set forth in Rule 52(a) of the Federal Rules of Civil Procedure. Resp. Br. 48-63. We disagree. "Rule 52(a) does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on

a misunderstanding of the governing rule of law." *Bose Corp.* v. *Consumers Union, Inc.*, 466 U.S. 485, 501 (1984). See also *Pullman-Standard* v. *Swint*, 456 U.S. 273, 287, 292 (1982). Accordingly, "if the trial court bases its findings upon a mistaken impression of applicable legal principles, the reviewing court is not bound by the clearly erroneous standard." *Inwood Laboratories Inc.* v. *Ives Laboratories, Inc.*, 456 U.S. 844, 855 n.15 (1982). See also *United States* v. *Singer Mfg. Co.*, 374 U.S. 174, 194 n.9 (1963); *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 394 (1948). The reason is self-evident. If the trial court misapprehends the applicable legal standard, it is unlikely to evaluate correctly the significance of the facts at issue or the relevance of the evidence offered in their support. See, *e.g.*, *Aikens*, 460 U.S. at 717. That is what occurred here.

We have set forth the appropriate legal standard for dismantlement of a segregated system of higher education—a State must end intentional discrimination, adopt and implement race-neutral policies, *and* eliminate those continuing elements of its former dual system that have the effect of fettering choice. The district court concluded, however, that the State "was only obliged to adopt and implement good-faith, race-neutral polices and procedures." Pet. App. 5. In other words, the district court equated "wholly voluntary and unfettered choice," *Bazemore*, 478 U.S. at 407, with the elimination of intentional discrimination. Thus, the district court's legal analysis eliminated from consideration the United States' evidence as to effects of remnants on the exercise of free choice.

The district court's opinion manifests that defect. As we explained in our opening brief, the United States introduced evidence showing that remnants of

the State's dual system continue to affect student choice. That evidence focused specifically on the State's reliance on ACT test scores alone to determine automatic admission to particular schools and on the State's perpetuation of the dual system by pointlessly duplicative programs at the historically white and historically black colleges. The district court applied its legal standard in a manner that simply ignores the significance of that evidence.

In the instance of admissions standards, the United States' evidence showed that: (1) Mississippi adopted the practice of using ACT scores alone to determine automatic admissions specifically to prevent the admission of black students to Mississippi's historically white institutions; (2) that admissions policy continues to deter black students from the historically white universities, which maintain higher ACT score requirements; (3) there is no educational justification for relying on ACT scores alone because —as the ACT's designers stress and the studies in Mississippi demonstrate—the use of high school grades in conjunction with ACT scores provides a *more* accurate prediction of college performance; and (4) there is no practicable impediment to considering grades in the admissions process. U.S. Br. 35-37. The district court rejected the United States' argument that the State should consider high school grades in the admissions process by simply observing that respondents were "concerned about grade inflation" and that use of the ACT scores alone is "a valid indicator." Pet. App. 180a. Plainly, the district court did not evaluate the United States' evidence under the legal standard that we have set forth.

Respondents' feeble response to our evidence, Resp. Br. 50-55, simply underscores the need for reevaluation on remand:

> (1) Respondents contend that the use of ACT scores alone to determine automatic admissions should not be considered a remnant of the past system—despite the fact that the practice was adopted to *preserve* that system—because the practice is now maintained 'for altogether different reasons." Resp. Br. 50. The only reason offered, however, is "grade inflation," Pet. App. 180a, and that reason is insufficient in light of the fact that the ACT, in combination with grades, provides a more accurate predictor of future academic performance.
>
> (2) Respondents next contend that the use of grades in the admissions process would not change the "racial identifiability" of the Mississippi's colleges because it would affect only a limited number of black applicants. Resp. Br. 51-52. The ultimate issue here, however, is unfettered choice—not racial identifiability. Mississippi cannot retain an irrational admissions barrier on the ground that it unjustifiably fetters the choice of only a portion of the black applicant pool.
>
> (3) Respondents' only answer to the fact that using the ACT alone underestimates the academic potential of black applicants is to say that "mere prediction" of academic performance "is not the total educational picture." Resp. Br. 53-54. The State of Mississippi, however, determines automatic admissions based *solely* on ACT scores, which—like high school grades—function as a predictor of academic performance. Respondents fail to explain how including grades or other information, in addition to ACT scores, would present a *less* complete "picture."

> (4) Finally, as to the practical impediments to using grades, respondents simply assert that the fact that other States are able to use grades in their admissions process does not mean that Mississippi would be capable of doing so. Resp. Br. 55. Yet respondents give no reason why Mississippi is incapable of doing what other States readily do.

The district court also failed to evaluate properly the United States' evidence concerning program duplication. That evidence showed that: (1) Mississippi instituted program duplication at separate white and black institutions with the express aim to establish a "separate but equal" educational system; (2) the maintenance of unnecessarily duplicative programs at historically white and historically black institutions perpetuates segregation by effectively endorsing a racially dual system; (3) there is no educational justification for unnecessary program duplication; and (4) program duplication can be practically eliminated by the cost-effective technique of modifying and consolidating programs that persist despite their inefficiencies and wastefulness. U.S. Br. 37-41. As we explained in our opening brief, the district court specifically found that unnecessary program duplication existed, but concluded that such duplication was irrelevant because "this case * * * is about the charge of racial discrimination" and whether the State's policies "are racially motivated." Pet. App. 146a, 200a. See U.S. Br. 37, 40. In this instance as well, the district court did not evaluate the United States' evidence under the legal standard that we have set forth.

Respondents, again, have no satisfactory reply to our evidence:

(1) Respondents assert that program duplication is not a remnant of its past de jure system because program duplication exists among the historically white universities. Resp. Br. 60-61. But the fact that program duplication may arise for reasons other than to maintain a racially dual system does not diminish the State's obligation to eliminate program duplication that originates from the dual system and that perpetuates segregation.

(2) Respondents next argue that the maintenance of pointlessly duplicative programs does not send a "racial message." Resp. Br. 61. That argument is inconsistent with the premise of *Brown*, the entire history of racial segregation, and the testimony in this case that Delta State and nearby Mississippi Valley—which needlessly duplicate programs—operate, respectively, as the "University of the Delta" for white students and the "University of the Delta" for black students. See U.S. Br. 20-21; J.A. 761.

(3) Respondents contend that most of the "alleged" unnecessary program duplication exists in the disciplines of business and education and that it is "patently unreasonable to suggest that universities in the 1990's must wholly abandon such disciplines." Resp. Br. 61. We suggest, of course, nothing of the sort. Our point is this: There is no reason why two colleges, one historically white and one historically black, should continue to offer the same curriculum when they are only 35 miles apart. U.S. Br. 40. As the district court stated, the unnecessary program duplication at those schools "cannot be justified economically or in terms of providing quality education." Pet. App. 145a-146a. Respondents offer no concrete justification for the duplication, which not only perpetuates state channeling of

students to institutions on the basis of race, but also—as in the case of the university centers—operates to prevent new or enhanced programs from being placed at the historically black institutions. U.S. Br. 5 n.5, 38 & n.6.

(4) Finally, respondents assert that elimination of program duplication will not affect "racial identifiability." Resp. Br. 63. As we have explained, however, the ultimate issue here is not racial identifiability, but rather whether the State has retained elements of its racially dual system that continue to fetter choice. Respondents offer no explanation why the State cannot take the economically rational step of eliminating what the district court found to be needless duplication.

In sum, it is clear that the district court did not properly consider the significance of the United States' evidence. The district court's simple declaration, contained in its conclusions of law, that Mississippi has provided "free and unfettered choice" is not a substitute for a reasoned analysis under the appropriate legal standard. Indeed, the district court's failure to make the inquiries relevant to that analysis underscores the need for concrete guidance. We submit that the four factors we have identified—whether the challenged practice was a part of the dual system, whether it perpetuates racial separation, whether it nonetheless serves legitimate educational objectives, and whether it can be practicably eliminated—provide appropriate direction and should be employed on remand.

4. The specific undertakings necessary to dismantle a racially dual system of higher education will depend on both the State's history of segregative practices and the current conditions at its universi-

ties. In this case, we have pointed specifically to Mississippi's use of ACT scores and its program duplication as remnants of its prior segregated system that fetter choice and should be eliminated. In doing so, we recognize that, in other cases, different state practices may constitute remnants that improperly interfere with choice.

Furthermore, the duty to take affirmative steps to ensure that choice is truly unfettered also exists with respect to the desegregation of faculty and administration. Just as announcing that a college is desegregated does not make it so, so too the mere announcement that a college's faculty is desegregated is not enough. A State that adopted segregative practices with respect to faculty and administration must take affirmative steps to ensure that black educators know that they are welcome at historically white schools and that white educators know that they are welcome at the historically black schools. Those steps will entail, at a minimum, new policies of affirmative and nondiscriminatory advertising and recruitment for faculty and administrative positions. Those steps are required not only to vindicate the equal protection rights of teachers, but also for the equal protection of students. The district court did not reach the question whether sufficient affirmative steps were taken in this regard, because it applied the wrong legal standard.

Finally, Amicus Board of Trustees of the University of Alabama blatantly misstates our position as being that "economic enhancement of historically black institutions is undesirable." Amicus Br. 3. That is in no sense our view. To the contrary, the United States has firmly supported the policy of enhancing historically black colleges and universities, which "have contributed significantly to the effort to

attain equal opportunity through post-secondary education for Black, low-income, and educationally disadvantaged Americans." 20 U.S.C. 1060. It has recognized that those institutions "represent a vital component of American higher education, enriching a great tradition of educational choice and diversity in this country." 25 Weekly Comp. Pres. Doc. 633 (April 28, 1989). The United States therefore has taken affirmative steps "to strengthen the capacity of historically Black colleges and universities to provide quality education." Exec. Order No. 12,677, 3 C.F.R. 222 (1989); See also Exec. Order No. 12,320, 3 C.F.R. 176 (1981). Nothing in our opening brief should be read to draw that vital commitment into question.

In contrast to the Amicus' unfounded characterizations, we argued in our brief that " 'improved' *duplication*" was undesirable, U.S. Br. 32 (emphasis added). It is, after all, *unnecessary duplication* that is the tell-tale remnant of the prior de jure system. That duplication operates within Mississippi to prevent enhancement of historically black institutions. As we have pointed out, *id.* at 38 n.36, Mississippi's construction of degree-granting centers, most vividly illustrated by the University Center in Jackson, either duplicated programs at historically black institutions or prevented new or enhanced programs from being located at historically black universities. If Mississippi had been fulfilling its solemn obligations under the Equal Protection Clause, those funds and facilities would have gone to Jackson State.

More broadly, it is incumbent on the State of Mississippi to eradicate discrimination from its system of higher education. Over the years, that discrimination manifested itself in a deprivation of equitable

and fair funding to historically black institutions, which sought faithfully, and under difficult circumstances, to serve the interests of black students in Mississippi. Those students were deprived of the unfettered choice demanded by the Equal Protection Clause. Indeed, those historic disparities operated to deprive prospective students of all races of the full range of choices that would have been theirs to enjoy but for the State's discriminatory practices. The time has now come to eliminate those disparities and thereby unfetter the choice of persons who can hereafter choose freely among the State's institutions of higher learning.*

Not only does the Amicus mischaracterize our earlier position, but it has long been the position of the United States that state educational policy choices to improve funding at institutions that have suffered inadequate funding in the past are desirable; what is undesirable—indeed, what is a remnant of the prior dual system that must be eliminated—are state decisions to duplicate program offerings without economic or educational justification in a manner that perpetuates the formerly de jure dual system. *Id.* at 37-41.

The cessation of unnecessary duplication may result in the reallocation of funds among historically white and historically black institutions. We believe that the dismantlement effort must take into account the important role of historically black institutions. While unwarranted duplication must be eliminated, the reallocation or cessation of programs and courses must be done in a way that does not place the burden

* Suggestions to the contrary in our opening brief, U.S. Br. 32-34, 41 n.39, no longer reflect the position of the United States.

of desegregation discriminatorily on black students, teachers, and administrators. See, *e.g.*, *Valley* v. *Rapides Parish School Bd.*, 702 F.2d 1221, 1228 (5th Cir.), cert. denied, 464 U.S. 914 (1983). The courts should "seek out, within practical limitations, an equitable allocation of the burden of desegregation." *Ibid.* For now, it is sufficient for the Court to hold that Mississippi has not met its obligations under the Equal Protection Clause in the area of higher education.

The judgment of the court of appeals should be reversed and the case remanded for further proceedings.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

OCTOBER 1991

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Nos. 90-1205, 90-6588

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JAKE AYERS, JR., *et al.*,
Petitioners,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

v.

RAY MABUS, Governor,
State of Mississippi, *et al.*,
Respondents.

**On Writ Of Certiorari To
The United States Court of Appeals
For The Fifth Circuit**

MOTION FOR LEAVE TO FILE AND BRIEF OF THE NATIONAL BAR ASSOCIATION, THE NATIONAL ASSOCIATION FOR EQUAL OPPORTUNITY IN HIGHER EDUCATION AND THE CONGRESSIONAL BLACK CAUCUS AMICI CURIAE IN SUPPORT OF PETITIONER

Of Counsel

ERROLL D. BROWN, ESQ.
CYNTHIA R. MABRY, ESQ.
LISA C. WILSON, ESQ.

National Bar Association
National Association for
Equal Opportunity in
Higher Education
Congressional Black Caucus

J. CLAY SMITH, JR.*
HERBERT O. REID, SR.
Howard University School
of Law
2900 Van Ness Street, N.W.
Washington, D.C. 20008
(202) 806-8028

**Counsel of Record*

May 30, 1991

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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The National Bar Association, the National Association for Equal Opportunity in Higher Education and the Congressional Black Caucus respectfully moves this Court for leave to file the attached brief as *amicus curiae* in support of Petitioners. The

Petitioners, Jake Ayers, Jr., *et al*, and the United States have granted consent to the filing of this brief. Since May 2, 1991, several efforts have been made to secure consent from the Respondent, Ray Mabus, Governor of the State of Mississippi. As of the date of the filing of this brief, the State of Mississippi has neither granted nor denied consent.

Respectfully submitted,

/s/ J. Clay Smith, Jr.

J. CLAY SMITH, JR.*
HERBERT O. REID, SR.
Howard University School
of Law
2900 Van Ness Street, N.W.
Washington, D.C. 20008
(202) 806-8028

Of Counsel

ERROLL D. BROWN, ESQ.
CYNTHIA R. MABRY, ESQ.
LISA C. WILSON, ESQ.

WILLIAM A. BLAKEY, ESQ.
STEPHEN C. HALPERN, ESQ.
ALFRED D. MATHEWSON, ESQ. *Counsel of Record*

QUESTION PRESENTED

Whether a state that has maintained a *de jure* and *de facto* system of segregation in publicly supported institutions of higher education has a continuing obligation to administer its education programs in ways calculated to undo and correct the present effects of its past discriminatory actions?

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CONSENT OF THE PARTIES

Petitioners and the United States have consented to the filing of this brief. The Respondent has neither granted nor denied consent to the filing of this brief.

INTEREST OF AMICI CURIAE

The National Bar Association (NBA) was founded in 1925, and is an organization comprised of 20,000 Black lawyers, many of whom are graduates of historically Black colleges and universities across the United States. Since its founding, NBA has been involved in promoting civil rights activities to improve the educational, societal, and economic welfare of Black and other disadvantaged Americans. NBA, for almost seventy years, has actively participated in the formation of this nation's legislative and judicial policy affecting the educational advancement and opportunities of minority and disadvantaged youth and young adults of the nation.

The National Association for Equal Opportunity in Higher Education (NAFEO) was founded in 1969, and is an association comprised of the presidents of over one hundred historically Black public and private colleges and universities located in the United States. Collectively, these schools, many established prior to the Civil War and thereafter, have graduated hundreds of thousands of Black and white Americans and other minorities whose voices are also represented by NAFEO. NAFEO was established to advance the high aims of educating Black Americans who were denied an equal opportunity to obtain an education at the post-secondary level as a result of the vestiges of *de jure* and *de facto* segregation. NAFEO members are committed to the goal of educating the students who attend its colleges and universities, and are dedicated to providing financial and human resources necessary for achieving this goal. NAFEO has a unique interest in this litigation as, through its membership, the alumni, and faculties of member HBCUs, who seek to promote the widest

possible sensitivity to the complex factors involved and the institutional commitment required to create successful higher education opportunities for students from groups exposed to the vestiges of racism and neglect imposed by various states and by other institutions of the nation.

The Congressional Black Caucus (CBC) was founded in 1970 by thirteen Black members of the United States House of Representatives to assure that the interests of Black and minority Americans would be heard and to influence legislative policies touching all aspects of America. Today there are twenty-four members of CBC who are vitally concerned about the educational opportunities of Black Americans, particularly at the university and college level and in all of the professional schools. Historically, CBC is and has been concerned about the survival of the HBCUs, and mindful of the disparate funding of these institutions, and the impact of such discrimination on the faculties, students and the citizens without a choice or an alternative to higher education.

STATEMENT OF CASE

Amici adopt the Statement of the Case as presented by the Petitioners.

SUMMARY OF ARGUMENT

The State of Mississippi must be held accountable for its continuing discriminatory acts. The state has historically engaged in disparate treatment of students and faculty of its historically Black colleges and universities. The areas of such conduct include state funding, program offerings, facilities, and faculty salaries.

The State of Mississippi in accordance with the mandate of this Court has an affirmative duty to correct its dual educational system of higher learning. That obligation can-

not be accomplished by instituting "good faith, race-neutral policies and procedures." Without correcting the present effects of past discrimination, the vestiges of the state's well-documented dual educational system are "grandfathered," and as a result, the Equal Protection guarantees of Black Mississippians are denied.

Over a period of two decades, Democratic and Republican Presidents of the United States, HEW, and Congresses have advanced initiatives to strengthen historically Black colleges and universities. The underlying historical and policy reasons for the initiatives, including the findings of Congress that the federal government and the states are partly responsible for discriminatory action against Black colleges and universities, should be accorded great weight.

ARGUMENT

I. THE STATE OF MISSISSIPPI IS LIABLE FOR ITS CONTINUING DISCRIMINATORY ACTS

> *"In educational policy, let the Negro have the crumbs that fall from the white man's table."*[1]

This quote by the Dean of the Department of Education of the University of Mississippi in 1914, exemplifies the state's overall treatment and attitude toward the students and faculty of the Historically Black Colleges and Universities ("HBCUs")[2] that have become fixtures in the

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[1] G. FREDRICKSON, THE BLACK IMAGE IN THE WHITE MIND 298 (1971) (quoting T. BAILEY, RACE ORTHODOX IN THE SOUTH, AND OTHER ASPECTS OF THE NEGRO QUESTION 93 (1914)).

[2] The term "historically black college or university" is preferred here to "predominantly" or "traditionally" Black colleges and universities because it defines both legally and precisely the class of institutions—100 in number—to which the federal law refers in section 322(b) of the Higher Education Act (20 U.S.C. § 1061 (Supp. 1991)) as being "established prior to 1964." Amici also use, throughout this brief, HBCU as inclusive of students, faculty and alumni of such institutions.

public university system in the State of Mississippi.[3] That system consists of eight educational institutions, and several other entities under the jurisdiction of the Board of Trustees of State Institutions of Higher Learning ("Board of Trustees"). The Board was created by statute in 1932. Five of the eight Historically White Institutions ("HWIs") were chartered solely for the purpose of educating white students: the University of Mississippi, Mississippi State University, the University of Southern Mississippi, Mississippi University for Women, and Delta State University. Three institutions were chartered to educate Black students: Jackson State University, Alcorn State University, and Mississippi Valley State University.[4] *Ayers v. Allain*, 674 F. Supp. 1523 (N.D. Miss. 1987) (*Ayers I*), *aff'd and remanded*, 893 F.2d 732 (5th Cir.) (*Ayers II*), *aff'd on reh'q*, 914 F.2d 676 (5th Cir. 1990) (en banc) (*Ayers III*).

When this Court rendered its decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) (*Brown I*), Mississippi became constitutionally required to dismantle its dual system, and eliminate all vestiges of its racially discriminatory educational system. *See also Brown v. Board of Education of Topeka*, 349 U.S. 294 (1955) (*Brown II*); *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 18 (1971). A fact established by the district court judge in *Ayers I* is the Board of Trustees' finding in 1954 that the Board was engaged in discriminatory activities to the detriment of the students and faculty at the HBCUs. Specifically, in 1954, the Board of Trustees issued the Brewton Report, entitled "Higher Education in Missis-

[3] Kujovich, *Equal Opportunity in Higher Education and the Black Public College: The Era of Separate But Equal*, 72 MINN. L. REV. 29, 67 (1987) (hereinafter *Equal Opportunity in Higher Education*).

[4] *See* U.S. COMMISSION ON CIVIL RIGHTS, EQUAL PROTECTION OF THE LAWS IN PUBLIC HIGHER EDUCATION 13 (1960). *See also* Bell, *Black Colleges and the Desegregation Dilemma*, 28 EMORY L. J. 949, 951-54 (1979).

sippi." It described disparities and differences in opportunities available to Black and white college and university students in Mississippi. The Report stated that educational opportunities available to Black students were limited to teacher education, agriculture, mechanical and the practical arts, and trades. In comparison, the HWIs offered undergraduate, graduate and professional studies, and exceptional facilities.

In 1974, the Board of Trustees recognized its discriminatory activities, and promised to remedy the effects of its longstanding misconduct. The Board of Trustees submitted a "Plan of Compliance" ("Plan") to the United States Department of Health, Education and Welfare ("HEW"). *Ayers I*, 674 F. Supp. at 1530. The Plan projected "opposite race student enrollment" and faculty and student hiring for each of the state institutions, emphasized the importance of implementing desirable programs for attracting students to the state college system, "placed a high priority on strengthening existing programs at the three historically black institutions, and promised priority for such institutions for new programs." *Id.* In addition, the Plan described methods for "eliminating the competition experienced by Jackson State University and Alcorn State University" posed by the operation of satellite campuses of two HWIs located in close proximity to those HBCUs. *Id.* The Plan further provided that special state legislative appropriations would be sought to implement the Plan's stated objectives. *Id.* The Board of Trustees adopted the Plan and required officials at each of the eight institutions to take measures to effectuate the Plan's goals and projections.[5]

[5] Notwithstanding the Board of Trustees' promises outlined in the Plan, the proposal was inevitably rejected by HEW and was never fully funded or implemented by the Board. *See Ayers I*, 674 F. Supp. at 1530.

Notwithstanding the forewarnings of the Brewton Report in 1954 and the projected goals of the Plan, disparities between the HWIs and the HBCUs are just as apparent today as they were thirty years ago.[6] As the district court judge found in *Ayers I*, the Board of Trustees' disparate treatment of the HBCUs in the areas of state funding, faculty salaries, facilities, and competing satellite campuses prevents HBCUs from operating at their full potential and attracting a diversity of students to their doors. The state's denial of resources to the HBCUs has served to perpetuate a dual system, that is, a set of five institutions predominately comprised of white students, and three institutions which are underfunded and predominately comprised of Black students.

A. Mission Designations

The Board of Trustees' dual system is further facilitated by "Mission Statements" by the Board released in 1981. These Statements imposed categorical designations on all eight institutions and were used by the Board of Trustees to "define the role and scope of its public universities." *Ayers I*, 674 F. Supp. at 1539. The Statements classified each public educational institution as either comprehensive, urban, or regional.[7] The Fifth Circuit found that the Board of Trustees used these designations to justify the disparate differences in funding, program offerings, and facilities at the Mississippi colleges and universities. *Ayers II*, 893 F.2d

[6] *See generally*, Thornton, *Symbolism at Ole Miss and the Crisis of Southern Identify*, 86 S. ATL. Q. 255 (Summer 1987) ("Because Ole Miss functions almost as sacred ground it must not be profaned; a change in ritual, in tradition, separates the present from the past. . . . Those who are possessed of this feeling are somehow bound by it; it becomes a commitment, a promise, an oath to be honored with 'faithful fidelity.' Tradition is treated with solemnity because it serves a nearly religious function; to break it is to lose the connection with the past and the identity which results from this union." [footnote omitted]); Henry, *Ole Miss: Evolution of Racism's Sound and Fury*, Wash. Post., Oct. 5, 1986, at 1, col. 2.

[7] *See Ayers I*, 674 F. Supp. at 1539-40.

at 752-53.[8] While the Board of Trustees' mission designations were based upon conditions at each of the institutions in 1981, the designations in fact mirrored and perpetuated the inequalities that had historically existed among the state's institutions.

Under Mississippi's dual system, the missions outlined for the state's HBCUs are quite limited.[9] The Board of Trustees alleges that the designated classifications are based on the number and level of degree programs offered by the institutions, the fields in which degrees are granted, the extent to which an institution conducts and receives

[8] *See Equal Opportunity in Higher Education*, *supra*, at 44-81 (the division of funds between Black and white public colleges demonstrated a total disregard for the advancement of the Black population; deficiencies in funding were matched by deficiencies in educational programs).

[9] *See generally*, NATIONAL ADVISORY COMMITTEE ON BLACK HIGHER EDUCATION AND BLACK COLLEGES AND UNIVERSITIES, BLACK COLLEGES AND UNIVERSITIES: AN ESSENTIAL COMPONENT OF A DIVERSE SYSTEM OF HIGHER EDUCATION 36 (1979) (The academic programs at the HBCUs were linked closely to the types of jobs that Black graduates were permitted to hold in a lawfully segregated society).

To qualify for admission into the Mississippi public university system, students are required to take a standardized test given by the American College Testing Program ("ACT"). The Board of Trustees has established minimum scores that must be achieved to qualify for admission into one of its eight institutions. A minimum of a 15 ACT composite score is required for automatic admission to five of the HWIs: Delta State for Women, the University of Mississippi, and the University of Southern Mississippi. Up to 5% of the students in an incoming class may be admitted with scores of less than 15. This policy is to accommodate talented or high risk students. Jackson State University and Mississippi Valley University requires a minimum score of 13. The HBCUs afford substantial opportunity to enter higher education to those who score as low as 9 on the ACT. *See Ayers I*, 674 F. Supp. at 1533-34. In that regard, the HBCUs offer educational opportunities to students that might otherwise not qualify for admission into any state institution of higher learning in the state.

funding for research, and areas of public service responsibility. *Ayers I*, 674 F. Supp. at 1539. Three HWIs were designated by the Board of Trustees as "comprehensive" universities: Mississippi State University, the University of Mississippi, and the University of Southern Mississippi.[10] Jackson State University, an HBCU, is the only institution designated by the Board as "urban." The urban designation defines the school's role as "one oriented toward service of the urban community, that is, the City of Jackson."[11] The remaining HWIs, Mississippi University for Women and Delta State University, and the remaining HBCUs, Alcorn State University and Mississippi Valley State University, have been designated as "regional" universities. *Id.* at 1540.[12]

B. State Funding

The Board of Trustees has historically underfunded the Black institutions in order to maintain a segregated public school system. *Ayers II*, 893 F.2d at 741. At the trial level, the district court judge found that the Board of Trustees employs a "funding formula" to determine the appropriate level of state appropriations for each of the institutions. *Ayers I*, 674 F. Supp. at 1546. However, the historical disparities in funding have created a great dis-

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[10] The comprehensive designation implies "that these institutions offer . . . the greater number and higher level of degree programs . . . [and] that each institution [is] expected to offer a number of programs on the doctoral level but not in the same disciplines. Leadership responsibilities in specific disciplines have been assigned to each comprehensive university in order to promote program quality and the efficient utilization of limited resources." *Ayers I*, 674 F. Supp. at 1539.

[11] The mission designated for Jackson State University is "to provide instruction in research and public service with particular emphasis on the needs of the urban community in which it is located." *Ayers I*, 674 F. Supp. at 1539-40.

[12] The regional designation "signifies a more limited programmatic focus for these institutions, that is, each is expected to restrict course offerings to quality undergraduate instruction." *Id.*

advantage for the HBCUs and their students, and the funding formula never has been revised to remedy the current effects of that past discrimination. Consequently, the three white "comprehensive" universities have, continue to receive and spend more money on a per student basis.[13]

C. Program Offerings

The *Ayers I* court also found that the three white "comprehensive" universities offer more academic programs than the HBCUs. *Ayers I*, 674 F. Supp. at 1538-39. Despite the intentions of the Board of Trustees to increase the number of academic programs at the HBCUs as outlined in the Plan, the HBCUs offer only 6.2%, or 24 of the 388 graduate programs that exist system wide. *Ayers II*, 893 F.2d at 739.

D. Facilities

The district court noted that the evidence showed that due to the state's formal segregation policies, the HWIs had received a disproportionate share of state funds allocated for facility expansion. *Ayers I*, 674 F. Supp. at 1548. The court determined the value of facilities at HWIs and HBCUs by calculating the replacement costs of each institution's facilities. The replacement value of the HBCUs was far less than the replacement value for the HWIs, due to the fact that historically, considerably more money has been spent on the HWIs. *Ayers II*, 893 F.2d at 742.

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[13] The general income received per student at the HWIs, on average, are as follows: $1,368 in 1960; $5,547 in 1980; and $8,934 in 1986. The general income received per student at the HBCUs, on average, are as follows: $699 in 1960; $4,354 in 1980; and $6,171 in 1986. The amounts spent by the HWIs per student, on average, are as follows: $1,351 in 1960; $5,412 in 1980; and $8,516 in 1986. The amounts spent by the HBCUs per student, on average, are as follows: $718 in 1960; $4,310 in 1980; and $6,038 in 1986. *Ayers II*, 893 F.2d at 741.

E. Faculty Composition and Salary

Just as the overall composition of the students enrolled in the Mississippi higher education system essentially is divided by race, so is the faculty. The Fifth Circuit ascertained that the percentage of Black faculty members at the predominantly white institutions in the 1985-86 school year ranged from 1.5% at the University of Mississippi to 5.0% at Delta State University. *Id.* at 737. In comparison, the percentage of Black faculty members at the HBCUs ranged from 67.3% at Jackson State University to 73.5% at Mississippi Valley State University. In addition, there was and continues to be a wide disparity between faculty salaries at Black and white institutions in Mississippi.[14] While the Board of Trustees' Plan reflected the Board's intention to secure funds from the legislature to hire more minority faculty, the legislature consistently "underfunded the Plan." *Id.* at 738. The racial composition of the faculty failed to dramatically change after the release of the Plan.[15]

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[14] During 1986-87, the average salaries at the HWIs were as follows: $30,757 at the University of Mississippi; $31,957 at Mississippi State University; $31,964 at the University of Southern Mississippi; $26,507 at the Mississippi University for Women; and $26,213 at Delta State University. During the same term, the average salaries at the HBCUs were as follows: $26,669 at Jackson State University; $21,291 at Alcorn State University; and $22,746 at Mississippi Valley State University. *Ayers II*, 893 F.2d at 737.

[15] The number of Black administrators at the HWIs was also scarce. By 1983, the percentage of Black administrators at the HWIs was as follows: 2.9% at University of Mississippi; 0.7% at Mississippi State University; 2.0% at University of Southern Mississippi; and 0% at Mississippi University for Women and Delta State University. The percentage of Black administrators at the HBCUs during the same year was as follows: 94.1% at Jackson State University; 96.7% at Alcorn State University; and 92.5% at Mississippi Valley State University. *Ayers II*, 893 F.2d at 738.

F. Satellite Campuses

Clearly, the Board of Trustees' interest in encouraging the growth and development of the HBCUs, and the advancement of Black college students enrolled in the state system and Black faculty employed in the system, never has been a priority. During the 1950s and 1960s, the Board of Trustees allowed the HWIs to open satellite campuses at locations in close proximity to two of the HBCUs.[16] The satellite campuses are in three Mississippi cities—Jackson, Natchez, and Vicksburg. In 1951, the Board of Trustees permitted the University of Mississippi to open Millsaps Center and allowed Mississippi State University to open Bellhaven Center. Both centers were located in Jackson, Mississippi in very close proximity to Jackson State University. These centers were consolidated in 1966, and became the University Center, a degree-granting institution. *Ayers I*, 674 F. Supp. at 1542. The establishment of the University Center deprived Jackson State University of potential student enrollment. The district court found that as of 1981, 76% of the baccalaureate degree programs, and 90% of the masters degree programs at Jackson State University were also offered at the University Center. *Ayers II*, 893 F.2d at 741.

The Board of Trustees continued these acts of discriminatory treatment against the HBCUs when in 1962, it allowed the University of Southern Mississippi to establish a resident center called the Natchez Center in Natchez, Mississippi, approximately forty miles from Alcorn State University. The Board of Trustees authorized the Natchez

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[16] As of 1971, fourteen of the existing thirty-three HBCUs in the country had "direct competition from HWIs located in the same cities and towns" duplicating some courses and drawing funds from the same state treasury. This common practice prevented many HBCUs from developing into full-service academic institutions like their predominantly white counterparts. *See* EGERTON, THE PUBLIC BLACK COLLEGES: INTEGRATION AND DISINTEGRATION 6-7 (1971).

Center to grant baccalaureate degrees in elementary and secondary education and business administration, courses which were also offered at Alcorn State University. *Ayers I*, 674 F. Supp. at 1543. In 1952, the Board of Trustees already had authorized Mississippi State University to establish a resident center called the Vicksburg Center at Vicksburg, Mississippi.

Amici submit that the conduct of the Board of Trustees, as evidenced by findings made by the federal courts, reflects a pattern of continuing discriminatory treatment against the HBCUs, and likewise against the Black students enrolled in the Mississippi public school system and the Black educators employed by the system. These continuing acts of discrimination demonstrate that the State of Mississippi, through the acts of the Board of Trustees, remain liable for its failure to provide adequate funding and resources for its HBCUs as it had done for its HWIs.

II. "A PUBLIC BODY WHICH HAS ITSELF BEEN ADJUDGED TO HAVE ENGAGED IN RACIAL DISCRIMINATION CANNOT BRING ITSELF INTO COMPLIANCE WITH THE EQUAL PROTECTION CLAUSE SIMPLY BY ENDING ITS UNLAWFUL ACTS AND DECLARING A NEUTRAL STANCE"[17]

The State of Mississippi in accordance with the mandate of this Court has an affirmative duty to correct its dual educational system of higher learning. That obligation cannot be accomplished by instituting so-called "good faith, race-neutral policies and procedures." Without correcting the present effects of past discrimination, the vestiges of the state's well-documented dual educational system are "grandfathered," and as a result, the Equal Protection guarantees of Black Mississippians are denied.

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[17] *Regents of the University of California v. Bakke*, 438 U.S. 265, 362 (1978) (Brennan, White, Marshall and Blackmun, J.J., concurring in part and dissenting in part).

The Board of Trustees, vested with the management and control of the institutions of higher education,[18] contends that it has fully satisfied its obligation of not maintaining a dual educational system by adopting a Plan by which every student, regardless of race, may "freely" choose the school he will attend. Amici submit that continuing state government policies and institutional structures— as stated in Section I of this brief—have frustrated choices available to students in Mississippi, and hence, have made such choices other than free. Amici further submit that a cloud is cast over any "good faith" educational policy advanced by the Board of Trustees because history reveals that Black Mississippians have never fared well under the Board of Trustees' management of its "good faith" promise to ensure that Black Mississippians' Equal Protection rights are protected. *See* J. SCHOR, AGRICULTURE IN THE BLACK LAND-GRANT SYSTEM TO 1930, at 55-63 (1982) (Alcorn State University).

In *Brown v. Board of Education of Topeka*, 347 U.S. 483, 495 (1954) (*Brown I*), the United States Supreme Court held that "[s]eparate educational facilities are inherently unequal." This principle, of course, is equally applicable to higher education. *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413 (1956). *See also Brown I*, 347 U.S. at 493-94; *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 641 (1950); *Bakke*, 438 U.S. at 362.[19] Both

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[18] The Governor of Mississippi appoints the Board with the consent of the state senate. *Meredith v. Fair*, 305 F.2d 343, 348 (5th Cir. 1962) ("[T]he Board, a constitutional body, is vested with the management and control of all Mississippi's colleges and universities, including the Negro colleges."); *See also* MISS. CODE § 6724 (1942).

[19] In *Bakke*, the Court recognized that "[t]he State certainly has a legitimate and substantial interest in ameliorating, or eliminating where feasible, the disabling effects of identifiable discrimination. [The] school desegregation cases [attest] to the importance of this state goal. . . ." *Id.* at 307.

this Court and the Fifth Circuit have confirmed the urgency of desegregating institutions of higher learning. *See Florida ex rel. Hawkins*, 350 U.S. at 414; *Meredith*, 305 F.2d at 352 ("[a]s a matter of law, the principle of 'deliberate speed' has no application at the college level; time is of the essence.").

This Court first addressed the substantive remedial duty imposed on state public bodies that maintained a *de jure* racial segregation in their public schools in *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).[20] That duty under the command of the Fourteenth Amendment has been reemphasized in subsequent opinions of this Court. *See Columbus Board of Education v. Penick*, 443 U.S. 449, 459 (1979); *See also Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979) (holding that school boards have a continuing duty to eliminate racial duality). More recently, this Court affirmed the principle that state public bodies have a substantive remedial duty to remove racial segregation in their schools. *Board of Education of Oklahoma City Public Schools v. Dowell*, 111 S.Ct. 630, 638 (1991).

This Court, however, has yet to determine if post-*Brown* remedial cases apply in the context of higher education. Amici respectfully submit that they should.

This Court has at least two approaches to meet the desegregation mandate of the Fourteenth Amendment. The first approach is akin to the State of Mississippi's "good faith, race-neutral policies and procedures," referred to by one author as the "prohibitory conception" approach. This approach "accepts the anti-discrimination principle as the definition of wrongful conduct . . . but it views the goal of anti-discrimination laws as simply stopping new violations[,

[20] As a preliminary matter, Amici's support of the remedial lessons advanced by this Court in *Green* is solely for the purpose of showing why a school board cannot wrap itself under a "freedom of choice" banner and avoid the constitutional obligation to affirmatively eliminate vestiges of a dual educational system.

but no more.] It is completely future-oriented." Gewirtz, *Choice in the Transition: School Desegregation and the Corrective Ideal*, 86 COLUM. L. REV. 728 (1986) (*Choice in the Transition*). In other words, the State of Mississippi views this Court's desegregation mandate as only requiring prevention of new violations under the Equal Protection Clause. The State of Mississippi's view is problematic because it operates *in futuro*, and therefore, if it is sanctioned by this Court, it would grandfather vestiges of the existing dual system as exemplified by mission statements, and other actions by the Board of Trustees and the state as identified elsewhere in this brief. Amici respectfully request that the Court reject this approach and its approval in *Ayers I* and *Ayers III*, respectively.

This Court has more appropriately adhered to a "corrective conception" approach in desegregation cases, which Amici submit should be applied in the case *sub judice*. This approach "requires significant measures to eliminate the ongoing effects of discrimination; it requires remedial intervention that goes beyond the prohibitions of the anti-discrimination principle itself, since merely assuring prospective adherence to that principle will not undo the continuing effect of past violations." *Choice in the Transition*, *supra*, at 731. *See also Green*, 391 U.S. at 438 n.4 (*quoting Louisiana v. United States*, 380 U.S. 145, 154 (1965)); *Board of Education of Oklahoma City Public Schools*, 111 S.Ct. at 638; *Bakke*, 438 U.S. at 362 (Brennan, White, Marshall and Blackmun, J.J., concurring in part and dissenting in part).[21] In other words, under the "corrective conception" approach, this Court's desegregation mandate requires the State of Mississippi to do more than merely stop future violations of the Equal Protection Clause, since merely assuring prospective adherence to that principle

[21] The existence of a dual education system, while never admitted by the State of Mississippi, is evident as Amici have spelled out elsewhere in this brief. *See also Meredith*, 305 F.2d at 360.

will not undo the well-documented and continuing effects of past Equal Protection Clause violations by the State of Mississippi. *Ayers II*, 893 F.2d at 734.

Green is instructive on how the corrective conception approach operates in the face of a "freedom of choice" plan advanced by the political body charged as the caretaker of public education. In *Green*, the school board contended that it had opened its schoolhouse doors, once closed shut to Blacks, and therefore those Blacks had the freedom to choose which school to attend, and any ensuing segregation in the schools was by choice. In rejecting this contention, the Supreme Court intimated in its holding that social and economic factors, and the availability of other alternatives weighed strongly against favoring such a future-oriented approach to desegregation. *Green*, 391 U.S. at 440 n.5, 441-42.

The underlying reasons for which a future-oriented approach to dismantling a dual educational system was rejected in the elementary and secondary level are present in the case at bar; therefore, Amici submit that no different result is summoned at the post-secondary level. *See, e.g., Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 28 (1971) (the Court rejected race-neutral methodology). Certainly, it was not choice that made freedom of choice plans unacceptable in *Green*. Rather, it was the fact that continuing government policies and institutional structures tainted those choices and made them other than free. *Cf. Choice in the Transition, supra*, at 741. Similarly, it is the continuing state policies and institutional structures that taint those choices for students in the case *sub judice*. Presently, no label of "good faith," the cornerstone of the State of Mississippi's argument, can undo the constitutional violations committed by the state because following the *Brown* decisions, the state promised to implement a "good faith" educational policy that assured Equal Protection rights for all Mississippians but its actions were to the contrary. *See Meredith*, 305 F.2d at

350.[22] Anything short of a "corrective conception" approach would serve as the catalyst for a surgical dismantling of HBCUs thereby leaving Black victims with reduced educational opportunities, while grandfathering the past discrimination of the State of Mississippi without a constitutional duty to correct past acts.

Amici also submit that the "freedom of choice" argument is illusory. Thus, this Court should reject respondents' attempt to seek safe harbor under *Bazemore v. Friday*, 478 U.S. 385 (1986), because that case is distinguishable. In *Bazemore*, a plurality of the Court, relying on a finding by the district court, held that the state was not responsible for the factors upon which people selected particular 4-H Clubs. *Id.* at 408. In the case at bar, the state is directly responsible for the discriminatory factors and funding patterns which distinguish one university from another and presently affects the choices students make in deciding which college to matriculate. As stated in Section I of this brief, assignment of missions and funding levels for the HBCUs and HWIs parallel the state's policy in pre-*Brown* days. Therefore, it stands to reason that if the vestiges of pre-*Brown* days exist at the college level, in a real way those factors affect students' choices in deciding which school to attend. Thus, "freedom of choice" exists in name but not in substance at the college level.

In analyzing the dichotomy of approaches to desegregation of institutions of higher education advanced by the

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[22] With respect to institutions of higher learning, the district court in *Meredith v. Fair*, 220 F. Supp. 224, 227 (S. D. Miss. 1962), took "judicial notice of Section 4065.3 of the Mississippi Code of 1942 as amended." It required the officers of the appropriate branches of government to use any lawful, peaceable or constitutional means to prevent compliance with the integration decisions of the Supreme Court of the United States. *Id.*

lower federal circuit courts,[23] Amici submit that the disposition of this case need not be pigeonholed solely in a *Green* or *Bazemore* posture given the declared value of HBCUs because "those two approaches are by no means mutually exclusive in the context of higher education." Petition for a Writ of Certiorari at 10, *United States of America v. Ray Mabus*, Nos. 90-1205, 90-6588, (S. Ct. Jan. 28, 1991). Amici also submit that "the action of Mississippi taken after abolition of *de jure* dual system—in particular, continuation of a racially-based admissions process and perpetuation of the dual system through program duplication of the historical black and historical white schools—substantially interfered with and thus impermissibly fettered [free] choice." *Id. Accord, Sweatt v. Painter*, 339 U.S. 634.[24] Therefore, the best way to assure that students'

[23] *See generally Ayers III*, 914 F.2d at 686-95; *Ayers II*, 893 F.2d at 744-56; *Geier v. University of Tennessee*, 597 F.2d 1056 (6th Cir. 1979).

[24] Black and white students who choose HBCUs are penalized when the state is permitted to tie funding to race-neutral policies which merely describe tangible historical differences between the schools for which the state is responsible. Black students who choose HWIs but would have chosen an HBCU had funding levels been equal or because of an environment free from racial discrimination are penalized also. It appears that only white students are offered the free choice of a higher education in relatively well funded institutions free of discrimination against them.

The First Amendment dimensions of the State of Mississippi's past discriminatory conduct are unmeasured and untold. The marketplace of ideas of faculty and students at HBCUs, and maybe white students originally barred by state law from attending them, has been trammeled. While, the district court stated in *Ayers I*, 674 F. Supp. at 1547, that "a State is not required to fund all educational institutions at the same level or . . . one at any particular level," the Court should determine whether any acts of the State violated the fundamental rights of Black citizens when it weakened their voices by underfunding HBCUs and strengthened the voices of white schools by enhanced funding. As a result of this confluent discriminatory conduct by the State of Mississippi under the First and Fourteenth Amendments and the present effects, Amici ask: Whose voices for truth, whose voices in the marketplace of ideas have been and are presently being silenced? *See Healy v. James*, 408 U.S. 169, 180 (1972) ("The college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.' ").

choices in selecting schools are free, in fact, is to insist on constitutional requirements that will undo the present day effects of the long history of discrimination. To leave the institutional remnants and fabric of inequality in place and require only future "freedom of choice" is to be blinded to the historical and institutional contexts in which students must make those choices. *Brown I*, 347 U.S. at 489, 492, 495.

To accept "freedom of choice" is to place the burden of remedying the constitutional violations by the State of Mississippi on the shoulders of the victims (students and faculty) who have no obligation to remedy the state's conduct, just to combat it. The constitutional burden should be on the public body responsible for public education to achieve nondiscrimination by removing the vestiges of a dual system. *See Green*, 391 U.S. at 441-42. Amici submit that there are few distinguishable parallelisms between the constitutional responsibilities of the agents of the state who manage public education at the elementary, secondary and higher education levels.

III. THIS COURT SHOULD GIVE GREAT WEIGHT TO THE FINDINGS OF PRESIDENTS, HEW, AND CONGRESSES THAT TO REMEDY THE EFFECTS OF PAST DISCRIMINATION IT IS IMPERATIVE TO ENHANCE HBCUS

> *"This Congress finds that . . . the current state of Black colleges and universities is partly attributable to the discriminatory action of the States and the Federal Government. . . ."* 20 U.S.C. § 1060 (3) (Supp. 1991).

Over the past twenty-two years, four Presidents, HEW, the federal agency enforcing Title VI of the Civil Rights

Act of 1964, 42 U.S.C. §§ 2000d, 2000h-2, in educational programs, and Congresses, have advanced major national initiatives to strengthen HBCUs. Amici maintain that these national initiatives, and the historical and policy reasons that caused the federal government to make those initiatives, should be given great weight by this Court. Respectfully, Amici submit that as a matter of judicial review, it would be incongruous for the Court to adopt the State of Mississippi's race-neutral claim in the face of contemporary congressional findings and other government policy statements.

Ayers III held that Mississippi satisfies its constitutional duty to disestablish a system of *de jure* segregation in higher education by merely "discontinuing prior discriminatory practices and adopting and implementing good-faith race-neutral policies." *Ayers III*, 914 F.2d at 687. That holding is inconsistent with the national policy consensus as stated by Presidents, HEW, and the Congresses.

A. PRESIDENTIAL ACTIONS AND INITIATIVES

1. *The Nixon Administration.* In July 1969, twenty presidents of HBCUs united and petitioned President Nixon about the plight of HBCUs and sought relief from the federal government. Soon thereafter, the Nixon Administration issued a federal report which concluded that "the neglect of these institutions has persisted too long."[25] In response, HEW Secretary Finch acknowledged that the federal government had not always been sufficiently responsive to the needs of the HBCUs and noted that efforts to remedy that were under way.[26]

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[25] FEDERAL INTERAGENCY COMMITTEE ON EDUCATION, FEDERAL AGENCIES AND BLACK COLLEGES, FISCAL YEAR 1969 6-7.

[26] FEDERAL INTERAGENCY COMMITTEE ON EDUCATION, FEDERAL AGENCIES AND BLACK COLLEGES, FISCAL YEARS 1972 & 1973 1.

President Nixon's message to Congress in February 1971 included a section labeled "Special Help to Black Institutions" which stated:

> Colleges and universities founded for black Americans are an indispensable national resource. Despite great handicaps they educate substantial numbers of black Americans, thereby helping to bring about a more rapid transition to an integrated society.
>
> Black institutions are faced with an historic inadequacy of resources. To help these institutions compete for students and faculty with other colleges and universities, the combined help of governments at all levels . . . must be summoned.[27]

The President proposed reforms in student aid programs that would "significantly aid students at black institutions," special efforts to assist Black colleges through the National Foundation for Higher Education and additional funds for Black colleges in programs administered by the United States Office of Education, the National Science Foundation, and the Department of Agriculture.[28]

2. *The Carter Administration.* President Carter issued Executive Order 12232,[29] the first of three Executive Orders issued by successive presidents mandating specific, affirmative initiatives by the federal government to enhance the education provided students at HBCUs. President Carter's Executive Order required the Secretary of Education to eliminate the "barriers which may have unfairly resulted in reduced participation in, and reduced benefits from, Federally sponsored programs" and to iden-

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[27] President's Message to Congress on Expanding Opportunities in Higher Education, 7 WEEKLY COMP. PRES. DOC. 282-83 (Mar. 1, 1971).

[28] *Id.* at 283.

[29] 3 C.F.R. 274 (1980 Comp.), *reprinted in* 1980 U.S. Code Cong. and Admin. News 787.

tify the legal authority under which the Departments "can provide relief from the specific inequities and disadvantages . . . in the agency programs."[30]

3. *The Reagan Administration.* In his first year in office, President Reagan issued Executive Order 12320.[31] It required each Executive Department, and agencies designated by the Secretary of Education, to develop annual plans to achieve a "significant increase" in the participation of HBCUs in federally sponsored programs. It directed the Secretary of Education to review the plan of each agency and to develop a comprehensive "Annual Federal Plan for Assistance for Historically Black Colleges" to be submitted to the Cabinet Council on Human Resources. The Order broke new ground by requiring the Secretary of Education to stimulate initiatives from the private sector to strengthen the management, financing and research of HBCUs. To coordinate overall planning and gather statistics from federal agencies, the Secretary of Education created the Office of White House Initiatives in the Department of Education. President Reagan's policies derived from his Administration's position that the HBCUs were "a national resource" and from the President's personal view that HBCUs hold an "unparalleled" place in American history.[32]

4. *The Bush Administration.* Within the first 100 days of his Administration, President Bush signed the most

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[30] *Id. See also* United Negro College Fund, 1978 PUB. PAPERS 2003-04 ("We have an obligation . . . to overcome some of the handicaps that have been inflicted on these people in the past.").

[31] 3 C.F.R. 176 (1981 Comp.), *reprinted in* 20 U.S.C.A. § 1060 (West 1990).

[32] *Id. See also* Memorandum for the Heads of Executive Departments and Agencies, 23 WEEKLY COMP. PRES. DOC. 852 (July 24, 1987) (Reagan acknowledges that education of Black youth "is key to their personal economic success and the growth of the American economy."). *See also* Curwood, *Black Colleges Draw New Interest*, Boston Globe, May 18, 1986, at 1, col. 1.

comprehensive, far-reaching Executive Order dealing with HBCUs in history. Noting that the HBCUs were "a special part of our heritage" and had supported a "noble educational tradition," Executive Order 12677[33] mandated an extensive set of federal requirements dealing with institutional finances, planning and management and the development of students, faculty and curriculum.[34] The Order was unprecedented in the breadth of the initiatives it established. In declaring that he issued the Order "to advance the development of human potential . . .," President Bush, like his predecessors, appreciated that the beneficiaries of these initiatives were not institutions, but the students served by the institutions.

B. HEW'S POLICY INITIATIVES THROUGH TITLE VI

For more than two decades, HEW's Office of Civil Rights ("OCR") has advanced standards and criteria for the enforcement of Title VI that consistently rejected the respondents' position in the instant case. Between January 1969 and February 1970, OCR determined that ten states, including Mississippi, were operating segregated systems of higher education in violation of Title VI. *Adams v. Richardson*, 356 F. Supp. 92, 94 (D.D.C. 1973). OCR notified the states of its finding and requested by letter that they submit desegregation plans and indicated that:

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[33] 3 C.F.R. 222 (1989 Comp.), *reprinted in* 20 U.S.C.A. § 1060 (West 1990).

[34] *Id.* The Order created a Board of Advisors on HBCUs to advise the Secretary of Education, the President and the HBCUs in planning and implementing programs to enhance the quality of education at HBCUs. As in Executive Order No. 12320, 3 C.F.R. 176 (1981 Comp.), this Order provided for endowments from the private sector. The Secretary of Education and the Board of Advisors were ordered to develop alternative sources of faculty talent. Finally, the Director of the Office of Personnel Management was ordered to develop a program to improve recruitment of graduates of HBCUs for employment in the federal government.

> Educational institutions which have previously been legally segregated have an affirmative duty to adopt measures to overcome the effects of past segregation. To fulfill the purposes and intent of the 1964 Civil Rights Act it is not sufficient that an institution maintain a nondiscriminatory admissions policy if the student population continues to reflect the formerly de jure racial identification of that institution.[35]

Hence, for over twenty years, the federal government has rejected the ideas that state systems of higher education formerly segregated by law, fulfilled their obligations under Title VI by merely imposing admissions requirements that were racially neutral.

In response to HEW's letters, the states either failed to submit plans or submitted plans which HEW rejected. However, HEW took no administrative enforcement action until Judge Pratt of the District Court of the District of Columbia ordered the agency to take appropriate action against the states. *Id.* at 97-99. The Court of Appeals for the District of Columbia Circuit affirmed *en banc*, noting the need for statewide plans that took "into account the special problems of minority students and of black colleges . . ." and recognized that "black institutions currently fulfill a crucial need and will continue to play an important role in black higher education." *Adams v. Richardson*, 480 F.2d 1159, 1165 (D.C. Cir. 1973).

In 1973 and 1974, in response to Judge Pratt's initial order, HEW again sent letters to ten states' systems of higher education. *Adams v. Califano*, 430 F. Supp. 118, 119 (D.D.C. 1977). In those letters, HEW required the states to desegregate the student body, faculty and staff of each institution, eliminate curriculum duplication and develop specializations at HBCUs that would foster de-

[35] DESEGREGATING AMERICA'S COLLEGES AND UNIVERSITIES 6 (J. B. Williams, III ed. 1988).

segregation and to provide HBCUs the resources to overcome past discrimination and to attract all people. Pacht, *The Adams Case: An HEW Perspective*, 22 How. L. J. 427, 435 n.35 (1979). In 1977, the district court ordered HEW to develop final guidelines that would identify the necessary ingredients of a higher education desegregation plan and contain "specific requirements [to] which the states must respond to . . ." *Adams v. Bell*, No. 81-1715, slip op., at 17 (D.C. Cir. 1981) (dissent).

HEW issued its "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education" in 1978. 43 Fed. Reg. 6658 (1978) ("Criteria"). The Criteria remain the most comprehensive and elaborate statement by the federal government of the desegregation requirements in higher education. In its Criteria, HEW reaffirmed, for the third time in eight years, that Title VI required more from the states than merely ending *de jure* discrimination and permitting all students to be admitted to any state institution irrespective of race.

The Criteria acknowledge the unique role of HBCUs. It notes that more than 80% of Black college graduates were trained at HBCUs and that HBCUs continued to graduate nearly 40% of all Blacks who receive college degrees. *Id.* at 6660.[36] Consequently, in desegregating it was necessary "to guard against the diminution of the higher educational opportunities for black students [and] to take into account the unique importance of traditionally black colleges . . ." *Id.* To that end, the Criteria required that desegregation "be preceded by the accomplishment of specific steps to strengthen the role of traditionally black institutions, eliminate program duplication [and] locate new programs at black institutions. . . ." *Id.* at 6662.

[36] *See also* Remarks at a White House Luncheon for Officials of Black Colleges and Universities, 17 WEEKLY COMP. PRES. DOC. 978 (Sept. 21, 1980) (Reagan's statement on how the commerce of the Nation has been enhanced by the existence of HBCUs and their graduates).

Part I of the Criteria provided that an acceptable desegregation plan will commit the state to assuring "that students will be attracted to each institution on the basis of educational programs and opportunities uninhibited by past practices of segregation." *Id.* at 6661-62. As such, acceptable desegregation plans would include: a mission that is not based on race, efforts to eliminate unnecessary program duplication, "priority consideration" for assignment of new degree programs to HBCUs and develop specific measures to reassign particular programs, course offerings, resources or services among the institutions or merging institutions or branches of institutions. *Id.*

Parts II and III were just as comprehensive. Part II required the states to commit to affirmative goals in educating Black youth. Part III called for far-reaching measures to desegregate faculty, administrative staffs, non-academic personnel and governing boards like the State of Mississippi's Board of Trustees. *Id.* at 6662-63.

There is precedent, from the experience in elementary and secondary school desegregation, for federal courts to give great weight to the Title VI standards. In 1965 and 1966, subsequent to the passage of Title VI, HEW announced desegregation "Guidelines" for elementary and secondary education. The most significant judicial interpretation of those standards is provided in *United States v. Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966), *aff'd*, 380 F.2d 385 (5th Cir. 1967) (*en banc*). The Fifth Circuit declared, "[I]n determining whether school desegregation plans meet the standards of *Brown* and other decisions of the Supreme Court, [ ] courts should give "great weight" to HEW Guidelines. Such deference is consistent with the exercise of traditional judicial powers and functions. . . ." *Id.* at 847.

For similar reasons, in the instant case, this Court should also give "great weight" to the policies of the federal executive branch under Title VI. To do so would be to

recognize the expertise of the executive and the delegated authority by Congress in this area.

C. CONGRESSIONAL INITIATIVES THROUGH TITLE III

Congress has been an active policy-maker in the national effort to enhance educational opportunities for students at HBCUs because it, too, has acknowledged that "past discrimination action of the States and the Federal Government has contributed to the weak position of many HBCUs." Higher Education Amendments of 1986, *reprinted in* 1985 U.S. Code Cong. & Admin. News 2593. Recognizing the importance of HBCUs such as those in Mississippi, Congress passed and President Lyndon B. Johnson signed the Higher Education Act of 1965, 20 U.S.C. § 1001 (1965) (Title III), to provide direct aid to higher education.[37] The purpose of the Act was "to strengthen the educational resources of our colleges and universities to provide financial assistance for students in postsecondary and higher education." H. R. Rep. No. 9567, 89th Cong., 1st Sess., *reprinted in* 1965 U.S. Code Cong. & Admin. News 1230.

Congress has appropriated federal funds for HBCUs to improve the academic quality of programs, faculty performance, fiscal stability, administrative management, and to acquire equipment, and increase self-sufficiency. *See* 20 U.S.C. § 1057(a) (Supp. 1991). HBCUs like Mississippi's Alcorn State University have demonstrated that with Title III funds, HBCUs make significant improvements in the quality of education they provide. *See Hearings Before Subcommittee on Postsecondary Education of the Committee on*

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[37] The first time Congress attempted to assist Black colleges was in the 1800s when Congress required that appropriated funds be distributed to Black colleges on a "just and equitable basis." Unfortunately, this effort, embodied in the Morrill Act of 1890, 7 U.S.C. § 301 (1890), did little to spur or to stimulate movement for the education of Blacks. *See also* J. SCHOR, AGRICULTURE IN THE BLACK LAND-GRANT SYSTEM TO 1930 121-26, 154 (1982).

Education and Labor, 99th Cong., 1st Sess. 287-89 (1985). Congress made a finding that HBCUs make significant contributions toward equal opportunity in post-secondary education for not only Black students but also for low income and educationally disadvantaged Americans. 20 U.S.C. § 1060 (Supp. 1991). Even after it promulgated Title III in 1965, Congress opined that HBCUs were not receiving a "fair share" of available funds. 1985 U.S. Code Cong. and Admin. News 2591.

Amici submit that great deference should be given to the findings of the legislative and executive branches of government that the present day effects of past discrimination require efforts to enhance HBCUs. Amici also emphasize the importance of this Court's decision with the wise words of Herbert Ordre Reid, Sr., who has urged other courts to ensure

> the preservation of black institutions . . . [for] the education of black people who have been the subject of this dual system. . . . [W]e have a great potential here of dismantling, disabling the traditional black institution, . . . I hope whatever relief this Court sees fit to grant will require some special attention to the education of black people . . . and that we not move mechanically to something that looks good on paper, sounds like equality, but in fact will close the door to education for black people.[38]

Amici strongly believe that on the record, *Ayers III* was improperly decided and that it should be reversed. However, should the Court remand the case *sub judice* in the manner of *Board of Education of Oklahoma City Public Schools v. Dowell*, then the State of Mississippi should be specifically assigned the burden of demonstrating that its past discriminatory conduct has no more than a *de minimus* present effect. The applicable standard requires "a school system clean of every residue of past discrimination." *Ross v. Houston Independent School District*, 699 F.2d 218, 255 (5th Cir. 1983). The assignment of the burden of proof to meet this standard is stated in *Brown v. Board of Education of Topeka*, 892 F.2d 851, 859 (10th Cir. 1989).

[38] *Equal Opportunity in Higher Education*, *supra*, at 33-34 n.17 (quoting Transcript of Hearing at 50-52, *Adams v. Califano*, 430 F. Supp. 118, 120 n.1 (D.D.C. 1977) (No. 3095-70)). *See also* Edley, *For Black Colleges*, Wash. Post., Dec. 2, 1985, at A23, col. 5; Gilliam, *Problems of Black Colleges*, Wash. Post., Nov. 17, 1986, at B3, col. 4; Tollett, *Black Institutions of Higher Learning: Inadvertent Victims or Necessary Sacrifices?* 3 BLACK L. J. 162 (1974).

CONCLUSION

For the foregoing reasons, Amici urge the Court to reverse.

Respectfully submitted,

J. CLAY SMITH, JR.*
HERBERT O. REID, SR.

Howard University School of Law
2900 Van Ness Street, N.W.
Washington, D.C. 20008
(202) 806-8028

*Counsel of Record

Of Counsel

ERROLL D. BROWN, ESQ.
CYNTHIA R. MABRY, ESQ.
LISA C. WILSON, ESQ.

WILLIAM A. BLAKEY, ESQ.
1101 Vermont Avenue, N.W.
Washington, D.C. 20005

STEPHEN C. HALPERN, ESQ.
Center for Applied Affairs Studies
University of New York at Buffalo
101C Fargo Bldg. No. 1
Buffalo, N.Y. 14261

ALFRED D. MATHEWSON, ESQ.
New Mexico University School of Law
1117 Stanford Drive, N.E.
Albuquerque, N.M. 87106

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Nos. 90-1205, 90-6588

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JAKE AYERS, JR., *et al.*,
UNITED STATES OF AMERICA,
Petitioners,

v.

RAY MABUS, GOVERNOR,
STATE OF MISSISSIPPI, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE ALCORN STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

GILBERT KUJOVICH
Vermont Law School
P.O. Box 96 Chelsea Street
South Royalton, VT 05068
(802) 763-8303

(Counsel of Record for Amicus Curiae)

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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v.

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Respondents

On Writs of Certiorari to the United States
Court of Appeals for the Fifth Circuit

MOTION OF THE ALCORN STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

The Alcorn State University National Alumni Association respectfully moves this Court for leave to file the attached brief as *amicus curiae* in support of Petitioners. The United States and the Ayers Petitioners have consented to the filing of this brief. Respondents have not consented to the filing of this brief.

Approximately 7,000 graduates of Alcorn State University

are members of the Alumni Association. The Association has been active in raising funds for student scholarships and other purposes and in support of the University with regard to legislation affecting its development.

Alcorn State University is one of the three predominantly black institutions in the Mississippi system of public higher education. The history and current status of Alcorn are unique and distinct from that of the other public colleges in Mississippi. In the late nineteenth century, it was designated as Mississippi's "separate but equal" land grant college for black students. For seventy years, it was the state's only public institution of higher education that admitted black students.

The attached brief of Amicus Curiae sets forth facts and argument concerning Mississippi's operation of segregated land grant colleges, the history of discrimination against Alcorn State, its faculty, and its students, and the effects of that discrimination today on the status and operation of Alcorn State. Because of Alcorn State's century-long status as a land grant institution and because of its unique historical role in the higher education of the black citizens of Mississippi, the brief of Amicus Curiae will be of assistance to the Court.

Respectfully submitted,

/S/

Gilbert Kujovich
Vermont Law School
P.O. Box 96, Chelsea Street
South Royalton, VT 05068
(802) 763-8303
Counsel of Record

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BRIEF OF THE ALCORN STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

CONSENT OF THE PARTIES

Private petitioners and the United States have consented to the filing of this brief. Respondents have not consented.

INTEREST OF AMICUS CURIAE

The Alcorn State University National Alumni Association has approximately 7,000 members all of whom are graduates of Alcorn State University. The National Alumni Association actively supports the University through fund raising and legislative activities.

STATEMENT OF CASE[1]

Amicus substantially agrees with the statement of the case presented by petitioners. Amicus will here focus on matters particularly relevant to Mississippi's land grant colleges. Alcorn State University is the land grant college Mississippi provided for black students. For 70 of the 90 years that Mississippi overtly excluded black students from its white institutions, Alcorn State was the only public college available to black Mississippians.[2] Mississippi State University is the land grant college originally designated for white students.[3] Consistent patterns of discrimination and segregation were evident in the two land grant colleges during the era of separate but equal

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[1] The Joint Appendix was not available in time for the filing of this brief. The opinions below are cited to pages in the official reports: *Ayers v. Allain*, 674 F.Supp. 1523 (N.D. Miss. 1987) (hereinafter *Ayers I*); *Ayers v. Allain*, 893 F.2d 732 (5th Cir. 1990) (hereinafter *Ayers II*); *Ayers v. Allain*, 914 F.2d 676 (5th Cir. 1990)(en banc) (hereinafter *Ayers III*). Exhibits are cited by exhibit number; the trial transcript is cited as "Tr."

[2] Alcorn became the state's black land grant in 1871. *Ayers I* at 1527. Mississippi's white institutions enrolled their first black student 91 years later in 1962. *Id.* at 1529. Alcorn was Mississippi's only black public college from 1871 until the state acquired Jackson State College in 1940. *Id.* at 1528.

[3] Mississippi State opened in 1880 and offered educational opportunities to white students in addition to those already available at the University of Mississippi. Additional public colleges for white students were opened in 1885, 1912, and 1925. *Ayers I* at 1526-28.

and at the time that this Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954). Those patterns have persisted to the present time.

I. Separate and Unequal Land Grant Colleges.[4]

The structure of the land grant system was established by four federal statutes. In 1862, the First Morrill Act granted federal land to each state to establish a land grant college. Ch. 130, 12 Stat. 503. The Hatch Act of 1887 began annual federal funding for research at the land grant colleges. Ch. 314, 24 Stat. 440. In 1890, the Second Morrill Act initiated annual federal funding for resident instruction. Ch. 841, 26 Stat. 417. Federal support for extension services began in 1914 under the Smith-Lever Act. Ch. 79, 38 Stat. 372. These statutes established the three primary functions of land grant colleges: resident instruction, research, and extension work.

From the beginning and continuing to the present, discrimination against Alcorn State, its students, and its faculty has followed the same basic pattern: inequality in funding for all three land grant functions and inequality in educational mission and programs.[5]

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[4] *See generally* Kujovich, *Equal Opportunity in Higher Education and the Black Public College: The Era of Separate but Equal*, 72 Minn. L. Rev. 29 (1987) [hereinafter *Separate but Equal*].

[5] Several reports by federal agencies document this discrimination. *See* U.S. Dep't of Interior, Bureau of Educ. 1928 Bull. No. 7, *Survey of Negro Colleges & Universities* (1929) [hereinafter *Negro College Survey*]; U.S. Dep't of Interior, Office of Educ., 1930 Bull. No. 9, *Survey of Land-Grant Colleges & Universities* (1930) [hereinafter *Land Grant Survey*]; Office of Educ., Fed'l Security Agency, *National Survey of the Higher Education of Negroes* (1942) [hereinafter *National Survey*].

Inequality in Funding. Of the four statutes that established the land grant system, only the Second Morrill Act mandated a sharing of federal funds with black land grant colleges.[6] None of the federal laws required a sharing of state funds. Throughout the separate but equal era, Mississippi allocated federal funds to Alcorn State only when required by federal statute; state funds were directed primarily to the white land grant college.

Federal funds under the Second Morrill Act and other federal statutes supporting resident instruction were divided roughly equally between Alcorn and Mississippi State.[7] Tr. 3062-63. However, state appropriations were the primary source of instructional funding and Mississippi allocated its state appropriations without concern for equitable treatment. In 1930, for example, Alcorn and Mississippi State received roughly equal federal support for land grant instruction, but for the much larger amount of state appropriations, Mississippi State's share was six times that of Alcorn.[8]

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[6] Federal funds under the 1890 Act could not be used in colleges excluding black students unless a state maintained a separate college for black students and "equitably divided" Second Morrill Act funds. § 1, 26 Stat. 417, 418. Later statutes authorizing additional funding for instruction incorporated the requirement of an equitable division. *See* Ch. 2907, 34 Stat. 1256, 1281-82 (1906) ("Nelson Amendment"); Ch. 338, § 22, 49 Stat. 436, 439 (1935) (Bankhead-Jones Act).

[7] The same division was made for the proceeds from the land grant under the First Morrill Act. In 1871, the Reconstruction legislature allocated three-fifths of the proceeds to Alcorn. In 1878, Alcorn's share was reduced to one-half and the remainder allocated to Mississippi State. *Separate but Equal* at 42 & n. 45.

[8] Federal instructional funds were $40,000 for Alcorn and $36,000 for Mississippi State. State appropriations were $40,000 for Alcorn and $256,000 for Mississippi State. 1 *Land Grant Survey* at 101, 106-107; 2 *Land Grant Survey* at 856.

In funding for research and extension work, the exclusion of Alcorn was complete. The Hatch Act called for an equal division of federal research funds in states operating two land grant colleges, unless the state legislature "shall otherwise direct." § 1, 24 Stat. 440. The Smith-Lever Act provided that federal appropriations for extension be "administered by [the land grant] college or colleges as the legislature . . . may direct." § 1, 38 Stat. 372, 373. Although these federal statutes clearly permitted, even encouraged, a sharing of federal funds, the Mississippi legislature directed not only federal but also state research and extension dollars exclusively to its land grant college for whites only.[9] *Ayers I* at 1543-45.

Inequality in educational mission and programs. From the beginning, the black land grants were assigned the mission of educating students denied meaningful opportunities for preparatory education. *Separate but Equal* at 69-71. At all levels of instruction, their educational program was restricted by the white conception of "appropriate" education for blacks--a conception based on an assumption of racial inferiority. *Id.* at 64-69. Thus, their educational mission was further defined by the two other functions assigned to them: training teachers for segregated public schools and manual or industrial training. *Id.* at 71-81, 104-106.

That restricted educational mission was evident at Alcorn. For many years its primary function was elementary and secondary education. More than half a century after it became

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[9] In all the segregationist states, the extension services operated by the white land grants included an underfunded black component to serve the black population. *Separate but Equal* at 54-60. This was true in Mississippi. *See Wade v. MCES*, 372 F.Supp. 126, 132 (N.D. Miss. 1974).

Mississippi's black land grant college, 80 percent of its students were below the college level. 2 *Land Grant Survey* at 882. The only public college provided for Mississippi's black citizens, was "largely a school of secondary grade . . . in which the greater part of the work is concentrated in industrial and manual training. Courses are offered in laundering, carpentry, blacksmithing, horseshoeing, wagon and carriage building, painting, shoemaking, and domestic science." *Negro College Survey* at 405.

Throughout the 1930's and 1940's, the funds allocated to Alcorn ensured its inferior status.[10] Restricted funding and a restricted mission prevented the development of a higher educational program. As late as 1940 Alcorn and the newly acquired Jackson State College offered black students a total 23 undergraduate programs. Students at Mississippi's white colleges could choose from more than 115 graduate and undergraduate fields. 2 *National Survey* at 10, 14-15. Neither Alcorn nor Jackson State was fully accredited by the Southern Association of Colleges. *Id.* at 16.

By the time of this Court's decision in *Brown*, more than eighty years of discrimination had firmly imposed on Alcorn an identity that was defined not only by the race of its students and faculty, but also by the quality of its facilities and educational program.

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[10] From 1934-1943, annual educational expenditures at Alcorn averaged $94,000; Mississippi State's average was $273,000. From 1947-1952, the annual averages were $433,000 at Alcorn and $1.9 million at Mississippi State. Brewton, *Higher Education in Mississippi* 335-36 (1954) (hereinafter *Brewton Report*). This district court refers to this Report as U.S. Ex. 29. *Ayers I* at 1538. It was also designated as Pltf. Ex. 200.

II. Separate and Unequal Land Grants at Mid-Century.

In 1954, Mississippi State was a $15 million educational facility organized into Schools of Agriculture, Engineering, Business and Industry, Science, and Education and a Graduate School. *Brewton Report* at 9, 55, 57, 88, 98-99. In the field of agriculture it had an "excellent" teacher training program, *id.* at 57, "superior research and teaching facilities," *id.* at 99, and a doctoral program in agronomy, *id.* at 89. Its Engineering School offered aeronautical, agricultural, civil, electrical, and mechanical engineering. *Id.* at 16. At mid-century, Mississippi State offered white students the scientific and technical education upon which the land grant system was based.

Mississippi's black citizens were not so fortunate. Long-lasting discrimination had prevented Alcorn from supporting an educational program even resembling the land grant model. The *Brewton Report* recommended that if Alcorn were to remain a land grant college the staff and faculty had to be "considerably strengthened" and "immediate improvements" were necessary in "physical plant, library, and basic educational equipment." *Id.* at 159. Alcorn's educational program conformed to the discriminatory pattern of the past: its "chief function has been and continues to be the preparation of teachers for elementary and secondary schools." *Id.* at 62. Even in teacher training, Alcorn's facilities were "completely unsatisfactory" with "crowded conditions and poor equipment." *Id.* at 64. Overall, persistent discrimination in funding had left Alcorn with a physical plant and equipment valued at only seven percent that of the white land grant.[11] *Id.* at 130.

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[11] Discrimination was particularly evident in the institutions' libraries. The white land grant had a $900,000 library building that contained a

As in the past, Alcorn's mission was further constrained by the general inadequacy of Mississippi's public education for black students. It continued to serve students who were largely unprepared for college work. *Id.* at 139. Its faculty also bore the mark of discrimination. Compared to the 207 Mississippi State faculty members, nearly 40% of whom had doctoral degrees, Alcorn had one doctorate in a faculty of 66. *Id.* at 293-94. Continuing discrimination in faculty salaries, *id.* at 292, ensured the perpetuation of this discriminatory pattern.

Perpetuation of discrimination was also evident in the research function of land grant colleges. Six decades after the Hatch Act encouraged an equal division of research funds, the Mississippi legislature continued to deny Alcorn all state and federal research dollars.[12] *Id.* at 338. Although the *Brewton Report* recommended that Alcorn participate in research, *id.* at 155, the black land grant first received a token share of state funds for research in 1972, *Ayers I* at 1544.

The patterns of discrimination and segregation had continued for nearly a century. Unless mandated by federal statute, federal funds were allocated to the white land grant, as was all but a small share of state funding. Unequal funding and a restricted mission yielded deep inequalities in educational program. While Mississippi State provided its white students

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collection of 165,000 volumes. *Id.* at 223. Alcorn's "separate but equal" library was housed on the second floor of a classroom building, difficult to use at night because of insufficient lighting, and lacked space to shelve even its inadequate collection of 15,000 volumes. *Id.* at 232-33.

[12] In 1955, research at Mississippi State's Agricultural and Forestry Experiment Station was funded at the level of $1.7 million; Alcorn received no research funds. U.S. Ex. 695e.

an education in science, engineering, agriculture, and other fields, Alcorn's primary mission was to train underprepared black students for teaching positions in segregated schools or to offer them industrial training. The pattern of discrimination was further manifested in a faculty that included few with advanced degrees, that was denied any participation in land grant research, and that was paid less than the white land grant faculty. Racial separation was rigidly enforced, but Alcorn and its students and faculty received no measure of equality.

III. Perpetuation of Separate and Unequal.

The district court found that at the time of *Brown* higher education in Mississippi was "both separate and unequal." *Ayers I* at 1528. Educational opportunities for blacks were limited to undergraduate training in teacher education, agriculture, mechanical arts, and the practical arts and trades while white students enjoyed extensive offerings at the undergraduate, graduate and professional levels. *Id.* at 1538. The court further found that state-compelled segregation continued "[a]t least until October, 1962" and "at that time" Mississippi's racially segregative policies included student enrollments, program offerings, faculty and staff, funding, and facilities. *Id.* at 1529, 1551. The district court did not determine when the state's policies ceased being segregative and discriminatory, but there has been little change in the historic patterns.

A. Perpetuation of Racial Separation.

In 1961, when James Meredith sought to transfer from Jackson State College to the University of Mississippi, state officials responded with "a carefully calculated campaign of

delay, harassment, and masterly inactivity."[13] *Meredith v. Fair*, 305 F.2d 343, 344 (5th Cir. 1962). After the Fifth Circuit ordered that Meredith be admitted, the legislative, executive, and judicial branches of the state government all joined the effort to prevent his enrollment. *Meredith v. Fair*, 313 F.2d 532; 328 F.2d 586 (5th Cir. 1962); *U.S. v. Barnett*, 330 F.2d 369, 370-80 (5th Cir. 1963). Continuing defiance led President Kennedy to dispatch U.S. Marshals and armed forces to enforce the Fifth Circuit's order. *Barnett*, 330 F.2d at 379-80. When Meredith registered for classes, under the protection of federal Marshals, rioting broke out on the campus. After order was restored, "Meredith carried on his studies under continuous guard until his graduation." *U.S. v. Barnett*, 376 U.S. 681, 686 (1964). It seems clear that James Meredith's enrollment in 1962 did not inaugurate a new era of voluntary student choice.

Segregation was perpetuated by other means. The Board of Trustees authorized white colleges to require that applicants achieve a minimum score on the American College Test (ACT), a policy that had the purpose and effect of excluding black students. *Ayers I* at 1531, 1555. Mississippi State adopted this racially exclusionary technique in 1963. *Id.* at 1531. White college "branch centers" were opened in close proximity to black colleges. *Id.* at 1551. White students tempted to attend a black college could thus voluntarily choose a convenient and segregated alternative. During the 1960's and

[13] Earlier, in 1958, Clennon King, a black faculty member at Alcorn State, attempted to enroll in summer school at the University of Mississippi. Professor King was "bodily ejected from the campus," taken to chancery court "where a lunacy warrant was drawn out" and King was committed to the State mental hospital for examination. U.S. Comm'n on Civil Rights, *Equal Protection of the Laws in Public Higher Education* 81 (1960).

1970's, the University of Southern Mississippi's (USM) "Natchez Center", near Alcorn State, granted degrees in programs duplicating those offered by Alcorn. *Id.* at 1542-43. Although USM's degree granting role at the center has been eliminated, *id.* at 1543, program duplication continues. When the Board of Trustees significantly reduced the degree programs offered at all colleges in the 1980's, it did not use this opportunity to give Alcorn an educational identity distinct from its discriminatory past and one that would encourage desegregation. Thus, in 1986 Alcorn offered only three non-essential bachelor's programs that were not unnecessarily duplicated at the geographically proximate and traditionally white USM.[14] U.S.Ex. 685s. The district court found that unnecessary program duplication was inefficient, *Ayers I* at 1541, 1564, but held that Mississippi had no remedial duty to eliminate it. *Id.* at 1561.

The pattern of segregated student enrollments has not significantly changed in the two land grant colleges. It was not until 1965 that Mississippi's white land grant enrolled its first black student; the first white student enrolled at Alcorn in 1966. *Ayers I* at 1529. Enrollment of a single "other-race" student does not desegregate a college and it did not desegregate the land grant colleges. Twenty years later, in 1985-86, black undergraduate enrollments were 95% at Alcorn and 11% at Mississippi State. *Ayers II* at 734-35. Faculty segregation also continued. Alcorn hired its first white faculty member in 1966; the first black faculty member did not appear at Mississippi State until eight years later. *Ayers I* at 1529. In 1985-86, the Mississippi State faculty was less than three

[14] "Unnecessary duplication refers to those instances where two or more institutions offer the same nonessential or noncore programs." *Ayers I* at 1540.

percent black while two-thirds of the faculty at Alcorn were black. *Ayers II* at 736-37.

The district court found that Mississippi's public colleges continue to be racially identifiable in their student bodies, but concluded that this has resulted from "free and unfettered choice" by students. *Ayers I* at 1558. The court further concluded that the state had used "every reasonable means" in its student recruitment efforts and thus had satisfied its "affirmative duty to dismantle the former segregated system insofar as the duty pertains to student enrollments." *Id.* Similarly, the court held that the state had fulfilled its affirmative duty with regard to desegregation of faculty. The court was "not aware" of any recruitment procedures beyond those already adopted that would assure greater faculty desegregation. *Id.* at 1563.

B. Perpetuation of Inequality.

In the mid-1960's, when continuing discriminatory practices maintained the virtually complete racial identity of the black and white land grant colleges, Mississippi State offered its white students five times the number of bachelor degree programs as Alcorn offered its black students. U.S.Ex.490. The Board of Trustees' 1974 "Plan of Compliance" committed to give black colleges priority for new programs. U.S.Ex.1 at 20. That commitment was not fulfilled. From 1974 to 1980 the Board authorized twice as many new programs for Mississippi State as for Alcorn. U.S.Ex.494. In 1981 Mississippi State offered 204 degree programs while Alcorn offered only 48. U.S.Ex.496. The ratio was approximately the same in 1986. U.S.Ex.685h.

In its Compliance Plan, the Board further committed to

strengthen existing programs at black colleges so those programs could obtain professional accreditation. U.S.Ex.1 at 19. That commitment was not fulfilled. In 1980, 88% of the eligible programs at Mississippi State were professionally accredited; at Alcorn State only 20% were accredited. U.S.Ex.501. The Board's own Program Review in the early 1980's revealed the same pattern of inequality. The Review defined "marginal" programs as those "so poor that changes must be made." Tr. at 3610-11. Nearly half of Alcorn State's programs were found to be marginal; the highest percent of marginal programs at any white institution was only 16% (Mississippi University for Women). Tr. at 3668. The determination that nearly half of Alcorn's educational programs were marginal produced no new resources for the black land grant; it was expected to "shift resources inhouse" to make necessary improvements. Tr. at 3642.

Past patterns of discrimination and segregation are clearly evident in other aspects of Alcorn's educational program. In the land grant "mechanic arts" curriculum, Mississippi State offers extensive programs in engineering, Bd.Ex.263 at 9-10, while the mechanic arts at Alcorn are found in its Industrial Technology Department with courses in welding, auto mechanics, construction, electricity, and plumbing. Tr. at 694-95. Of the five colleges offering a degree in home economics, a core area of land grant instruction, only Alcorn lacks accreditation by the American Home Economics Association. Bd.Ex.263 at 12. The Board's admissions policies assign to Alcorn, but not to Mississippi State, the mission of educating underprepared black students.[15] Seventy percent of Mississippi State's nearly

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[15] Automatic admission to Mississippi State requires a minimum ACT score of 15. *Ayers I* at 1533. Among ACT test-takers, 65% of the whites

900 faculty members but less than half of Alcorn's faculty of 174 hold the doctorate degree. *Ayers II* at 737. As in the past, Mississippi State's faculty salaries are substantially higher than Alcorn's at all levels. U.S.Ex.694q.

In 1981, missions were assigned to each college and university on the basis of the number and level of degree programs, research funding and program, and public service responsibility. *Ayers I* at 1539. Alcorn was given the most restricted designation of "regional" university, while Mississippi State the most expansive designation, "comprehensive" university. *Ayers I* at 1539-40. The court of appeals concluded that the mission designations had the effect of maintaining the more limited program scope of the black colleges. *Ayers III* at 690. The court further held that disparities between the black and white schools in program offerings, faculty, funding, facilities and land grant programs "are very much reminiscent" of the de jure segregated system because of the relationship between mission designations and "historical racial assignments." *Ayers III* at 692. Nevertheless, the court found no violation of the state's remedial duty because the mission designations and other policies were "race-neutral" and not racially motivated. *Id.*

The allocation of land grant research and extension funding is also very much reminiscent of the separate but equal era.

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and 24% of the blacks scored above 15 in 1985-86. U.S.Ex. 893i, 893j. Thus, Alcorn's minimum ACT score of 13 for automatic admission, *Ayers I* at 1534, admits more underprepared black students. Exceptions to the ACT requirement and to the requirement that applicants complete a core curriculum in high school, *id.* at 1533-34, have the same effect. In 1986-87, more than half of Alcorn State's entering freshmen had ACT scores below 15; at Mississippi State only 5% of the freshmen scored below 15. Bd.Ex.173.

Alcorn receives federal funds for research only when required by federal statute. Where the Mississippi legislature has discretion, federal research dollars are directed exclusively to Mississippi State and its Agricultural and Forestry Experiment Station (MAFES).[16] *Ayers I* at 1544. State appropriations for research at Alcorn did not exist prior to 1970 and have been negligible since that time.[17] While the Alcorn agricultural research program employs approximately 50 persons, MAFES maintains a research faculty of nearly 300 professionals and 500 other employees. Tr. 680; Bd.Ex.393 at 12.

It was not until the early 1970's, and only when federal statutes expressly required, that Alcorn received a small amount of federal extension funding.[18] Even then, state funds were denied to Alcorn for another decade. Since 1981 Alcorn has received the paltry sum of $108,000 in annual state funding for extension work. Annual state support for extension

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[16] In 1967, Alcorn began to receive research grants from the U.S. Department of Agriculture. Bd.Ex.392 at 5. In 1977, Congress expressly provided for annual research appropriations to black land colleges. § 1445, 91 Stat. 913, 1009-11; *Ayers I* at 1545. In the early 1980's, Alcorn annual share of federal research funding was approximately $1.3 million, while MAFES received $3.5 million per year. Tr. 662-74, 679; U.S.Ex. 695e.

[17] The state appropriated $105,000 to establish a branch experiment station at Alcorn in 1971. Bd.Exh.368. Annual state funding for research at Alcorn has been approximately $240,000 since that time. Tr. 678-79, 3189. The state appropriates approximately $10 million each year for research at MAFES. U.S.Ex.695e.

[18] Beginning in 1971, federal appropriations statutes for the Department of Agriculture expressly provided for extension work at the black land grants or "1890 institutions." 85 Stat 183, 186 (1971). In 1977, Congress authorized annual extension appropriations for the black land grants. § 1444, 91 Stat. 913, 1007-1008. These specially designated funds have usually been less than 10% of federal funding allocated to the Mississippi State extension program. U.S.Ex.695h.

work by Mississippi State's Cooperative Extension Service (MCES) has been approximately 100 times that amount. U.S.Ex.695h; Tr. at 680-81, 3322-23. The Alcorn extension program has an on campus staff of 12 persons. The field staff is limited to 45 "para-professionals," many without an undergraduate degree, who work under the direction of MCES field professionals. Tr. 682-84, 3236-37. Mississippi State's extension program has more than 400 professional employees. Bd.Ex. 393.

The patterns of discrimination and segregation that began in the nineteenth century have persisted with remarkably little change. The district court held that Mississippi has no remedial duty to alter those patterns because differences in the land grant programs are "educationally sound and are not motivated by discriminatory motive." *Ayers I* at 1563. The Court of Appeals agreed. *Ayers III* at 681.

SUMMARY OF ARGUMENT

In an uninterrupted line of elementary and secondary desegregation cases beginning in 1968, this Court has held that a state has an affirmative constitutional duty to disestablish de jure segregated school systems. The goal of that remedial duty is not limited to the distribution of students, but extends to all effects of segregation and discrimination including the condition of formerly de jure segregated schools. The effects of Mississippi's widespread and long-lasting violations of the Equal Protection Clause remain in institutions that are racially identifiable in their student enrollments, faculties, missions, and educational programs. Established principles require that Mississippi remedy the effects of its constitutional violation.

The absence of state control over student enrollment decisions does not alter the remedial goal or relieve the state of its obligation to correct the condition that offends the Constitution. In higher education, the remedy must be implemented through actions which the state does control. A properly framed higher education desegregation remedy is consistent with the legitimate need for diversity in institutions of higher education. Distinctions among institutions, other than racial distinctions, promote desegregation. A properly framed desegregation remedy need not impermissibly intrude into other educational policies. Traditional principles of equity call for a balanced evaluation of the remedial duty and the state's important and legitimate educational interests.

Even if the courts below appropriately interpreted the constitutional obligation to require only that the state's actions be racially neutral and student choice be truly voluntarily, they have misapplied those standards. In a desegregation remedy, neither racial neutrality nor voluntary choice can be considered apart from the continuing effects of past discrimination.

ARGUMENT

I. In Higher Education, Remedial Techniques But Not The Remedial Goal Differ from Those In Elementary And Secondary Education.

In *Green v. County School Board*, this Court observed that after *Brown* II the initial remedial effort was to obtain "for those Negro children courageous enough to break with tradition a place in the 'white' schools." 391 U.S. 430, 436 (1968). That initial effort was inadequate to alter well-entrenched patterns of discrimination and segregation. *Green*

therefore imposed on school authorities an affirmative constitutional duty to disestablish public school systems in which schools were racially identified not only by the composition of their student bodies and faculties, but by every other facet of school operations. *Id.* at 435-38. Subsequent cases have consistently held that a constitutionally adequate remedy must look beyond the racial distribution of students and also address the condition of schools that have been segregated by law. *Bd. of Educ. v. Dowell*, 111 S.Ct. 630, 638 (1991); *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 460 (1979); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 18 (1971).

In higher education, the initial remedial effort was also designed to obtain a place in white colleges for black students courageous enough to break with tradition. *E.g.*, *Florida* ex rel. *Hawkins v. Bd. of Control*, 350 U.S. 413 (1956). In Mississippi, that first step was taken by James Meredith in 1962. *See* pp. 9-10, *supra*. As in elementary and secondary education, the initial remedial effort was inadequate. The patterns of segregation and discrimination were well-entrenched. The Mississippi system of higher education was separate and unequal when *Brown* was decided and the state continued its intentionally segregative policies thereafter. *Ayers I* at 1538, 1551. The entrenched pattern of segregation has not been significantly altered by the state's more recent, facially neutral policies. As the example of Alcorn illustrates, the black colleges continue to be racially identified not only by the composition of their student bodies and faculties, but also in their missions and educational programs. *See* pp.11-16, *supra*.

Well-established remedial principles require that Mississippi address the continuing effects of its de jure segregation and

"correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." *Swann*, 402 U.S. at 16. The courts below recognized that the state has an "affirmative duty to disestablish its prior system of de jure segregation," *Ayers III* at 697, but fashioned a remedial standard wholly inadequate to accomplish that task.

As stated by the court of appeals, "Mississippi satisfies its constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures." *Id.* This extraordinarily limited remedial standard was derived from two features of higher education not found in elementary and secondary education: (1) the state does not compel enrollment or assign students to colleges and universities and (2) higher education institutions are necessarily diverse in their program offerings and other characteristics. Neither of these differences supports rejection of the remedial principles this Court has established for desegregation cases.

A. Student Choice in Higher Education Does not Alter the Goal of a Desegregation Remedy

Traveling by slightly different routes, the courts below arrived at the same destination. The district court held that in the absence of "direct official control" over attendance patterns in higher education, the remedial focus shifts from the results of a state's actions to the racial neutrality of those actions.[19]

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[19] The district court appeared to adopt the additional remedial requirement that the state's actions "not substantially contribute to the continued racial identifiability of individual institutions," *Ayers I* at 1554, but did not consider this factor in evaluating most of the state's actions. *See id.* at 1561, 1563 (no duty to "maximize" desegregation). In affirming, the court

Ayers I at 1554. The court of appeals concluded that since remedial measures such as pupil assignment and zoning are not available in higher education, freedom of choice is an adequate remedy if the state discontinues its past discriminatory practices and adopts race-neutral policies. *Ayers III* at 686-87.

Both courts confused the goal of a disestablishment remedy with the means of achieving it. The fact that the state does not have direct official control over student attendance decisions in higher education necessarily constrains the range of remedial techniques. It is clear that measures such as student assignment and zoning are not available. However, the constraints on remedial techniques do not redefine the goal of a disestablishment remedy. The remedial duty to eliminate the effects of a constitutional violation is not limited to the elementary and secondary context or even to desegregation cases. *See Louisiana v. U.S.*, 380 U.S. 145, 154 (1965) (voting rights). As Chief Justice Burger put it in *Swann*:

> "[A] school desegregation case does not differ fundamentally from other [constitutional] cases involving the framing of equitable remedies. . . . The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." 402 U.S. at 15-16.

In the Mississippi system of higher education, the condition that offends the Constitution is the continuing racial identity of institutions, an identity defined not only by student enrollments but also by faculties, educational mission, programs, and

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of appeals made no mention of a duty to refrain from actions substantially contributing to racial identifiability.

quality. That condition is no longer determined by direct official control over attendance patterns, but it is determined by other official actions which the state does directly control. These include decisions concerning funding, mission assignments, program allocations, faculty hiring, and student admissions criteria.[20] It is through these official actions that the remedial duty is satisfied by a balancing of the individual and collective interests.

This Court's decision in *Bazemore v. Friday*, 478 U.S. 385 (1986), is not to the contrary. The youth clubs in *Bazemore* involved a "wholly different mileau" not only from the "context of the public schools" in *Green*, *id.* at 408, but also from the context of public higher education in this case. The youth clubs did not have different admissions criteria depending on the racial characteristics of their membership. There was "no statutory or regulatory authority to deny a young person the right to join any Club." *Id.* Nor did the funding, programs, or services of the youth clubs follow past patterns of discrimination and segregation. No black youth was denied club services or provided inferior services. Services were provided to the local clubs "equally regardless of their racial make-up" and club activities beyond the local level were fully integrated.[21] *Bazemore v. Friday*, 751 F.2d 662, 667 (4th Cir. 1984).

These differences between *Bazemore* and this case are not mere formalities. If the state officials in *Bazemore* had es-

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[20] In the highly centralized system of administration used in Mississippi, the state Board of Trustees has substantial control over these decisions. U.S.Ex.636.

[21] The plaintiffs in *Bazemore* agreed that apart from the racial makeup of club membership, all vestiges of past discrimination had been eliminated. *Bazemore*, 751 F.2d 662, 697, n. 15 (dissenting opinion).

tablished different admissions criteria for black and white clubs, provided less funding and fewer services to the black clubs, housed them in inferior facilities, and restricted them to a program associated with past discrimination and segregation, this Court would not have concluded that the "continued existence of single-race clubs does not make out a constitutional violation." 478 U.S. at 408. *Bazemore* did not fashion a new remedial principle that voluntary choice automatically relieves state officials of any obligation to remedy the effects of past discrimination. As Justice White's opinion for the majority makes clear, *Bazemore* stands for the proposition that in state-sponsored activities based on voluntary choice, the Constitution does not require compulsory assignment if state officials have successfully eliminated all other vestiges of past discrimination under their control.

Under *Bazemore*, the goal of disestablishment of a formerly de jure segregated system of higher education is not to be accomplished by compulsory assignment of students but through decisions concerning educational missions, program allocations, funding, faculty hiring, and student admissions criteria. It was through these decisions that Mississippi created and perpetuated its separate and unequal system of higher education. It is through these decisions that Mississippi must now implement an effective desegregation remedy.

B. Remedial Measures Other Than Compulsory Assignment Are Consistent with Institutional Diversity.

The courts below found further justification for their refashioning of the remedial goal in the fact that institutions of higher education are diverse and distinct from each other whereas elementary and secondary schools are essentially uniform and fungible. *Ayers III* at 687; *Ayers I* at 1554. The court of appeals assumed that a remedy addressed to the condition of the Mississippi's colleges would destroy institutional diversity and require that Mississippi's identifiably black colleges "shall at all times remain equal in funding, offerings, and facilities" with their identifiably white counterparts. *Ayers III* at 687, 692. That assumption ignores the role that diversity and the absence of compulsory assignment play in the higher education remedy.

In the context of higher education, actions that make racially identifiable colleges duplicates of each other would encourage racially based student choices and thereby impede rather than achieve the goals of a desegregation remedy. An effective remedy should be designed to ensure that racially identifiable colleges *are* diverse in mission and educational programs so that student choices can be based on institutional characteristics other than race. For the same reason, the educational features of a racially identifiable black college should be distinct from those which characterized its segregated and discriminatory past. In the land grant institutions, for example, Mississippi has perpetuated all of the prominent features of the separate but equal era that identified Alcorn as the land grant institution for black students and as the inferior land grant college. *See* pp.7-16, *supra*. The continuing connection between racial identifiability and the discriminatory past not only deters white students from enrolling at Alcorn, but also affects the educational opportunities provided to the black students who make up the overwhelming majority of Alcorn's enrollment.[22]

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[22] A remedial focus on the condition of the colleges does not confer constitutional rights on the institutions. Cases such as *Swann* require that a

A desegregation remedy that takes account of institutional characteristics and serves the higher education functions of uniqueness and diversity would not "force" potential students to attend particular colleges. Diversity in higher education is designed to present students with choices, and the characteristics of different institutions should and do influence those choices. In Mississippi, however, the continuing effects of past segregation and discrimination inject racial considerations into that choice. Each of the institutions is substantially identified by the race of their students and faculty. In addition, as the example of Alcorn makes clear, the black institutions retain the mission and program characteristics that have identified them as black and inferior colleges. No student has a right to choose a public college based on its racial characteristics. A desegregation remedy may properly restrict that basis for student choice.

C. Equitable Remedies Can Accommodate the Legitimate Needs of Higher Education.

Equity is "characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs." *Brown II*, 349 U.S. 294, 300 (1955). The remedial power of equity seeks to achieve a "balanced evaluation of the obligation to promote desegregation . . . with other, equally important educational interests. . . . Neglect of either the obligation or the interests destroys the even-handed spirit with which equitable remedies must be approached."

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remedy address the condition of schools to eliminate all the "indicia of a segregated system." 402 U.S. at 18. A remedy addressing the indicia of segregation in Mississippi's system of higher education no more implies a finding of "institutional rights" than did *Swann*.

Keyes v. School Dist. No. 1, 413 U.S. 189, 240 (Powell, J., concurring and dissenting). The balanced evaluation of equity does not call for the neglect of Mississippi's educational policy concerns. A district court takes account of those concerns in considering "the feasibility or practicality of the proposed remedy." *Wright v. Council of Emporia*, 407 U.S. 451, 467 (1972). If the state demonstrates that a proposed remedy would prevent it from achieving "important, legitimate ends," an equity court should look to alternative remedial measures. *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 538 (1979).

The district court in this case had little occasion to evaluate possible remedial measures against the state's potentially competing interests. The proceedings below were directed to the question of violation, and not that of remedy.[23] Consequently, the focus was on the actions defendants had taken and not on the feasibility or practicality of remedial steps that might be taken. In some instances, the courts below accepted state practices that appeared to have only a tenuous relationship to any important state interest. Mission designations that perpetuate the restricted programs of black institutions, *Ayers III* at 690, and that were justified in part by a need to conserve resources, *id.* at 689, satisfied the remedial duty even though the designations are an inefficient allocation of the state's resources, *id.* at 690. A higher education system characterized by "inefficiencies and wastefulness," *Ayers I* at 1563, was excused from hiring more black faculty at its white colleges because it has insufficient funds to attract qualified black faculty, *id.* at 1538. An admissions policy that severely

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[23] By its order of July 23, 1986, the trial judge denied defendants' motion for a single trial on the issues of violation and remedy.

limits the number of black students eligible for admission to white colleges, *see* note 15, *supra*, does not conflict with the remedial obligation "even assuming the policy is narrow, inaccurate, and educationally unsound" as long as it is not intentionally discriminatory. *Ayers III* at 690-91.

The remedial power of equity is not so one-sided. Traditional principles of equity call for restraint in a higher education case, but not for abdication.

II. The Courts Below Incorrectly Applied Standards of Racial Neutrality And Voluntary Choice.

Amicus contends that voluntary choice and racial neutrality are not the touchstones of a constitutionally adequate higher education desegregation remedy. Even if they are, however, the courts below failed to engage in a proper inquiry into the racial neutrality of Mississippi's policies and practices and the voluntariness of student choices.

A. Racial Neutrality Requires More Than Restraint From Intentional Discrimination.

In *Swann*, Chief Justice Burger observed that a remedial plan that appears to be neutral is not acceptable if "school authorities present a district court with a 'loaded game board.'" 402 U.S. at 28. In this case as well, the state's actions have been played out on a "loaded game board" and should not be adequate simply because they appear to be neutral. The courts below accepted state actions under the standard of "racial neutrality" even if those actions perpetuate the continuing effects of segregation and discrimination. For example, the court of appeals concluded that disparities between the black

and white institutions in funding, programs, and faculty "are very much reminiscent of the prior [separate but equal] system" because they "largely follow mission designations [which] to some degree follow the historical racial assignments."[24] *Ayers III* at 692. Nevertheless, the court held that the state's policies were racially neutral, not racially motivated, and thus "met or exceeded [the state's] duty to disestablish prior de jure segregation in these areas." *Id.*

Because of its indifference to state actions that perpetuate the effects of past discrimination, the remedial standard applied below requires little more than the absence of discriminatory purpose. That limited standard is inadequate for precisely the reasons identified by Justice Powell in *Keyes*:

> "Any test resting on so nebulous and elusive an element as a school board's segregative 'intent' provides inadequate assurance that minority children will not be short-changed in the decisions of those entrusted with the nondiscriminatory operation of our public schools." 413 U.S. at 227 (concurring and dissenting opinion).

As applied below, Mississippi's remedial obligation is neither affirmative nor concerned with disestablishment. The district and appellate courts embraced that passive duty because of their assumption that students in the Mississippi system of higher education voluntarily choose a college or university. However, the courts' standard of voluntary choice, like that of racial neutrality, failed to consider the continuing effects of

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[24] The technique of building on past discrimination is more reminiscent of the past than the court of appeals may have realized. *See Meredith v. Fair*, 305 F.2d 343, 361 (5th Cir. 1962)(inferiority of facilities and programs at black colleges used to justify rejection of Meredith's transfer request).

past discrimination.

B. Determination of Voluntary Student Choice Must Consider Whether Choice Is Influenced By Continuing Effects of Past De Jure Segregation.

Despite the extraordinary remedial power attributed to voluntary choice, the opinions below did not define that concept. It is clear, however, that the "voluntary choice" found adequate to excuse continuing patterns of past segregation took no account of the influence those patterns have on student choice. Black students were found to have a free choice and were not channelled to black institutions, *Ayers I* at 1557, despite admissions requirements that give them greater accessibility to black colleges than white colleges, *see* note 15, *supra*.[25] Similarly, the decisions of white students not to enroll in a black college were considered voluntary even though the state's assignment of educational missions "maintain[ed] the more limited program scope at the historically black universities."[26] *Ayers III* at 690. The conception of voluntary choice applied below is inadequate

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[25] The courts below found sufficient explanation for the absence of low scoring black students in the white colleges in the fact that few such students had been rejected. But the white colleges did not publicize their willingness to accept students below their published minimum ACT score. *Ayers II* at 735-6 & n. 12. *See Dothard v. Rawlinson*, 433 U.S. 321, 330-331 & n. 13 (1977) (potential applicants unable to meet published standards and not informed of waiver provision deterred from applying).

[26] The court of appeals seemed to hold contradictory views on voluntary choice. It rejected remedial measures addressed to institutional missions and programs because they would "force a potential student to attend a particular university." *Ayers III* at 687. Yet institutional missions that perpetuate past segregative patterns and restricted the programs of black colleges, *id.* at 690, 692, were not seen as affecting the voluntariness of student choices.

because it fails to consider the effect that the "historical traces of separate post-secondary educational paths for blacks and whites" have on student choices. *Ayers III* at 694 (Higginbotham, J., concurring and dissenting).

The notion that continuing effects of past unlawful actions can impermissibly influence what would otherwise be voluntary choices is neither novel nor unique to school desegregation cases. This Court long ago recognized that employee organizations established by employers can restrict free choice of a bargaining unit after employer domination of the union has ceased: "The effects of long practice persist . . . [and] the disestablishment of an employee organization may be necessary to give untrammelled freedom for the creation of a bargaining unit." *NLRB v. So. Bell T&T Co.*, 319 U.S. 50, 57 (1943). In *Teamsters v. United States*, the Court recognized that potential minority applicants can be deterred from applying "by the racial . . . composition of that part of [an employer's] work force from which he has discriminatorily excluded members of minority groups." 431 U.S. 324, 365 (1977). The widespread and obvious effects of past segregation in Mississippi's college and universities similarly constrain the voluntary choice of black and white high school graduates.

CONCLUSION

The decision in this case will affect not only Mississippi but other states that constructed separate and unequal black public colleges, maintained separate and unequal colleges after *Brown*, and continue to operate racially identifiable colleges in which the effects of past discrimination persist. The remedial standard employed by the courts below would require that those states do little more than refrain from future intentional

discrimination. Neither this Court's decision in *Brown*, its subsequent remedial decisions, nor the Equal Protection Clause permits a remedy so indifferent to the continuing effects of past discrimination.

The judgment of the court of appeals should be reversed and the case remanded for further proceedings to determine the remedial measures necessary to eliminate continuing effects of discrimination and segregation.

Respectfully submitted,

Gilbert Kujovich
Vermont Law School
P.O. Box 96 Chelsea Street
South Royalton, VT 05068
(Counsel of Record for
Amicus Curiae)

Supreme Court, U.S.
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No. 90-1205 and No. 90-6588

In The

Supreme Court of the United States

October Term, 1990

UNITED STATES OF AMERICA,

Petitioner,

v.

RAY MABUS, et al.,

Respondents.

MRS. JAKE B. AYERS, SR. et al.,

Petitioners,

v.

RAY MABUS, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

AMICUS BRIEF OF THE STATE OF TENNESSEE IN SUPPORT OF UNITED STATES

CHARLES W. BURSON*
Attorney General and Reporter
State of Tennessee

JOHN KNOX WALKUP
Solicitor General

CHRISTINE MODISHER
Assistant Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37243-0485
(615) 741-4710

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

What is the scope of the duty under the Fourteenth Amendment to the United States Constitution of a state which formerly operated a de jure segregated system of higher education?

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On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

AMICUS BRIEF OF THE STATE OF TENNESSEE IN SUPPORT OF UNITED STATES

INTEREST OF AMICUS STATE

The State of Tennessee, its Governor, the Tennessee Board of Regents, the University of Tennessee, and the Tennessee Higher Education Commission, as defendants in the higher education desegregation case now styled

Geier v. McWherter, have definite and substantial interest in the outcome of this case. One basis of the petitions for certiorari by the United States and by petitioners Ayers, et al., is that the Fifth Circuit's ruling in this case is in conflict with the law of the Sixth Circuit as set forth in *Geier v. University of Tennessee*, 597 F.2d 1056 (6th Cir. 1979) and *Geier v. Alexander*, 801 F.2d 799 (6th Cir. 1986). The decision in this case will have direct effect on the Tennessee desegregation litigation in *Geier*.

Tennessee can provide assistance to this Court in this case because of Tennessee's experience in *Geier* over the last twenty-three years.

STATEMENT OF THE CASE

The amicus state adopts the statement of the case as presented by the United States in its petition for certiorari.

SUMMARY OF ARGUMENT

The duty of a state which formerly operated a segregated system of higher education in violation of the Fourteenth Amendment to the United States Constitution is to cease the discrimination and to eliminate the present effects of that past discrimination. The scope of a state's remedial duty in this context is determined by the scope of the state's constitutional violation.

No set rules are applicable to every situation. However, a system of higher education has fulfilled its constitutional duty when:

- all facilities are equal,
- program duplication has been eliminated at formerly white and black institutions in the same geographical area,
- admission requirements do not perpetuate substandard academic quality at formerly black institutions,
- governing boards are integrated,
- affirmative action in hiring and promotion decisions have produced results and promise to continue to do so.

ARGUMENT

I. THE SCOPE OF THE DUTY UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION OF A STATE WHICH OPERATED A DE JURE SEGREGATED SYSTEM OF HIGHER EDUCATION INCLUDES ELIMINATING THE PRESENT EFFECTS OF PAST SEGREGATION.

It is the position of the amicus state that the duty of a state which formerly operated a de jure segregated system of higher education is not solely controlled by either *Green v. County School Board*, 391 U.S. 430 (1968) or *Bazemore v. Friday*, 478 U.S. 385 (1986). Rather, the duty of a state which operated a segregated system of higher education in violation of the Fourteenth Amendment is controlled by *Louisiana v. United States*, 380 U.S. 145 (1965).

The duty of a court to fashion remedies in race discrimination cases brought under the Fourteenth Amendment was stated in *Louisiana v. United States*, 380 U.S. at 154. In this voting rights case, this Court stated that "the [district] court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." This aspect of the decision has been applied in a variety of other Fourteenth Amendment race discrimination cases.

In the context of desegregation of public elementary and secondary education, this Court relied upon *Louisiana* in *Green v. County School Board*, 391 U.S. at 438. In *Green*, the Court noted *Louisiana* and held that *Brown v. Board of Education*, 349 U.S. 294 (1955) (*Brown II*), commanded that "state-compelled dual systems were . . . clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green*, 391 U.S. at 438. *Green* held that a "freedom of choice" plan for students was not an end in itself but rather a means to a constitutionally required end of segregation and its effects. Where a "freedom of choice" plan did not produce the desired effects, something more was required. *Id.*, 391 U.S. at 439.

This Court also relied upon *Louisiana* in *U.S. v. Paradise*, 480 U.S. 149, 183 (1987) for the proposition that a district court has the duty to render a decree which will eliminate the discriminatory effects of the past. *Paradise* was a race discrimination in employment case brought under the Fourteenth Amendment. In *Paradise*, this Court upheld a court-ordered race-conscious affirmative action

plan designed to redress past race discrimination in hiring and promotion by the Alabama Department of Public Safety. In fact, this Court stated: "The government unquestionably has a compelling interest in remedying past and present discrimination by a state actor." *Id.* at 167.

In the landmark case of *Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (*Brown I*) this Court concluded that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." This Court concluded that segregated education deprived black students of equal protection of the laws guaranteed by the Fourteenth Amendment. This Court in *Brown I* referred generally to "public education" and no one can seriously dispute that this doctrine applies with equal force to public post-secondary education.[1]

In *Brown II*, 349 U.S. at 301, this Court noted that school systems must "effectuate a transition to a racially nondiscriminatory school system." In this context, the Court mentioned the physical condition of school plants, the school transportation system, personnel, and a system of determining admission to public schools on a nonracial basis. *Id.*

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[1] In *Brown I* this Court discussed several prior cases dealing with segregation in higher education. Specifically it was noted that in *Sweatt v. Painter*, 339 U.S. 629 (1950), the question whether *Plessy v. Ferguson*, 163 U.S. 537 (1896) should be held inapplicable to public education was expressly reserved.

It would be illogical and contrary to all precedent to say that this same duty does not apply to race discrimination in public higher education. A state which in the past operated a de jure system of higher education has a duty under the Fourteenth Amendment to eliminate the present effects of that past discrimination.

In *Geier v. Alexander*, 801 F.2d 799 (6th Cir. 1986) the Sixth Circuit upheld a pre-professional program for black undergraduate students. The Court distinguished *Bazemore* based on the greater value of advanced education as compared with high school clubs. This reasoning of the Sixth Circuit was criticized by the Fifth Circuit in *Ayers v. Allain*, 914 F.2d 676 (5th Cir. 1990).

It is true that states have great interest in the education of their citizens. *See Brown I*. However, the source of the duty to remedy present effects of past de jure segregation does not rest on the relative merits of elementary and secondary education compared with post-secondary education. The source of the duty is the Fourteenth Amendment as interpreted in *Louisiana* and the compelling interest of the state in remedying past and present discrimination by a state actor.

This Court's decision in *Bazemore* is not inconsistent with this line of cases. In *Bazemore*, this Court held in a Title VII claim that the state was required to remedy present racially discriminatory salaries resulting from past race discrimination. *Bazemore*, 478 U.S. at 397. With regard to 4-H and Extension Homemaker Clubs for high school students, the Fourth Circuit had found that there was no evidence that anyone was denied membership or services or provided inferior services because of their

race. *Bazemore v. Friday*, 751 F.2d 662 (4th Cir. 1984). This Court noted that there was no current violation of the Fourteenth Amendment since prior discriminatory practices had been discontinued and a neutral admissions policy adopted. *Bazemore*, 478 U.S. at 408. In essence, all discrimination and its effects caused by the *state* had been remedied. There was no proof of racially-biased services or admission requirements.

Bazemore is factually distinguishable from formerly de jure segregated state systems of higher education. In higher education, the "disease" of de jure segregation can be much more widespread and include inferior facilities, segregated faculties, program duplication, and differing student admission requirements. None of these factors were present in *Bazemore*. For these reasons, it is the suggestion of the amicus state that it is the duty of a state which operated a de jure system of higher education in violation of the Fourteenth Amendment to cease the discrimination and to remedy the present effects of the past discriminatory actions.

II. THE SCOPE OF A STATE'S REMEDIAL DUTY IS DETERMINED BY THE SCOPE OF THE STATE'S CONSTITUTIONAL VIOLATION.

It is the position of the amicus state that the duty to remedy the present effects of past illegal discrimination is satisfied when the state has placed in compliance with the Fourteenth Amendment the aspects of the system under the state's control. While a determination of compliance will depend on the facts of each case, general guidelines can and should be drawn by this Court.

The state or other body which originally imposed de jure segregation has the affirmative obligation to remedy the effects of that discrimination. Judicial authority enters only when the state or local authority defaults. It is well-established with equity cases that the nature of the violation determines the scope of the judicial remedy. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1971). This principle is tied in part "to the necessity of establishing that school authorities have in some manner caused unconstitutional segregation, for 'absent a constitutional violation there would be no basis for judicially ordering [a remedy].' " *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 434 (1976) *citing Swann*, 402 U.S. at 28. Thus the scope of the remedy must be determined by looking at the nature of the original constitutional violation by the state.

Various courts have noted the differences between elementary and secondary education on the one hand and higher education on the other. *See Geier v. University of Tennessee*, 597 F.2d 1056, 1065 (6th Cir. 1979), *cert. denied*, 444 U.S. 886 (1979); *Alabama State Teachers Association v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969).

> One is free and compulsory and pupils are assigned to particular schools. The other is purely elective, requires the payment of tuition and fees, and permits students to choose a particular school for a variety of reasons. Most elementary and secondary schools are roughly equal in curriculum and facilities whereas individual colleges and universities vary greatly in their offerings and emphasis.

Geier v. University of Tennessee, 597 F.2d at 1065. Generally, faculty members in higher education institutions cannot be reassigned to a different institution. Furthermore, higher education operates on a statewide or regional basis rather than on a local basis. Higher education programs vary from institution to institution and are not uniform.

These differences, however, do *not* result in a lesser duty to remedy the present effects of past discrimination. Rather, these distinctions mean that different remedies must be utilized. *Geier v. Alexander*, 801 F.2d at 802. Bodies responsible for public higher education do generally have control over the quality of the facilities, the mission statements of each institution, the programs and degrees offered by each institution, student entrance requirements, and funding. Affirmative action can be utilized by each institution in recruiting and hiring faculty and staff and in student recruitment.

Perhaps the most vivid example of the effectiveness of court-ordered desegregation remedies in the context of higher education can be found in Tennessee. In Tennessee, the present effects of past de jure segregation have been eliminated to a large extent.

Like elementary and secondary education in many states, post-secondary education in Tennessee, Mississippi and elsewhere was once racially segregated by law. In Tennessee, the sole institution for higher learning operated by the state for African-Americans was Tennessee State University (hereinafter "T.S.U.") (formerly Tennessee Agricultural and Industrial State University). *Sanders v. Ellington*, 288 F.Supp. 937, 940 (M.D. Tenn. 1968). The

state statute creating T.S.U. stated that its purpose was " . . . to train negro students in agriculture, home economics, trades and industry, and to prepare teachers for the elementary and high schools for negroes in the state." *Geier v. Blanton*, 427 F.Supp. 644, 645 n. 2 (M.D. Tenn. 1977) *citing* Tenn. Code Ann. §49-3206. Compulsory racial segregation in all Tennessee institutions of higher learning was first mandated by Article II, §12 of the Tennessee Constitution of 1870. In 1901 Tennessee became the first state to enact criminal statutes requiring racial segregation in all public and private colleges. *Geier v. University of Tennessee*, 597 F.2d at 1058 n. 1. As the district court noted in 1968:

> Prior to the Supreme Court decision in *Brown v. Board of Education* in 1954 the public educational system in Tennessee operated under one-half of the decision of the Supreme court in *Plessy v. Ferguson* of 1896 . . . The races were certainly kept separate in the schools; but I would assume that no one would argue in good faith that the schools were equal.

Sanders v. Ellington, 288 F.Supp. at 939.

Desegregation of Tennessee higher education has been under the Court's jurisdiction since 1968 – twenty-three years. This litigation resulted in an order to merge Tennessee State University, the formerly black school in Nashville, with University of Tennessee Nashville – a predominantly white school about five miles from T.S.U. *Geier v. Blanton*, 427 F.Supp. 644 (M.D. Tenn. 1977), *aff'd Geier v. University of Tennessee*. This was permissible, according to the Sixth Circuit, because the defendants had failed to dismantle the state-wide dual system, the

"heart" of which was an all black T.S.U. *Geier v. University of Tennessee*, 597 F.2d at 1067.

In 1984 all the parties to the litigation with the exception of the United States entered a "Stipulation of Settlement" which was approved by the Court. The Stipulation is reported in *Geier v. Alexander*, 593 F.Supp. 1263, 1267 (M.D. Tenn. 1984), *aff'd* 801 F.2d 799 (6th Cir. 1986). This Stipulation addresses student recruitment and retention, open admissions to two-year institutions, changes in admission and retention requirements for four-year schools and racially identifiable institutional image. In the area of employment, the Stipulation requires that other race employment goals be set for each institution and that a variety of programs be implemented to train, recruit, and employ other race faculty and administrators. The Stipulation also addresses Tennessee State University and the two other four-year institutions in Middle Tennessee. It provides for improvement in the facilities at T.S.U., elimination of program duplication, and enhancement of program offerings at T.S.U.

Significant effort has been made by the State of Tennessee under this stipulation and the results have been dramatic. By fall, 1990 nearly $39,000,000 had been appropriated to fund an ambitious master plan to improve the facilities at T.S.U. An additional $9,000,000 was recommended for fiscal year 1991 to fund other desegregation activities under the Stipulation. (1991 Desegregation Progress Report, Table 17, Reproduced as Appendix A). Almost all formerly white colleges and universities employed black faculty and administrators roughly in proportion to their availability. More than half of the

formerly white schools had met their goals in black student enrollment. (1990 Desegregation Progress Report, Table 1, Reproduced as Appendix B). The entire 1990 Desegregation Progress Report has been filed with this Court for its consideration.

In hearing this case, this Court should consider not only defining the duty of public higher education to desegregate but also when that duty has been satisfied. Under this Court's recent decision in *Board of Education of Oklahoma City Public Schools v. Dowell*, 111 S.Ct. 630, 638 (1991), a court's jurisdiction over a desegregation case can be ended when there has been good faith compliance with the desegregation decree and when the vestiges of past discrimination have been eliminated to the extent practicable. Judicial tutelage for the indefinite future is not required.

Although no set rules applicable to every situation can be made, the amicus state urges that the parameters of the legal duty to desegregate be defined.

1. The state need only remedy the present effects of past *state* imposed segregation.

2. There is no constitutional right to a particular degree of racial balancing or mixing. *Pasadena*, 427 U.S. at 434; *Swann*, 402 U.S. at 24.

3. Affirmative action and race-conscious remedies cannot be used to maintain any particular racial balance. *United Steelworkers, etc. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transportation Agency, Santa Clara County, CA*, 480 U.S. 616, 630 (1987).

4. A system of higher education may be declared unitary and a desegregation case dismissed when:

- all facilities are equal,
- program duplication has been eliminated at formerly white and black institutions in the same geographical area,
- admission requirements do not perpetuate substandard academic quality at formerly black institutions,
- governing boards are integrated,
- affirmative action in hiring and promotion decisions have produced results and promise to continue to do so.

The position of the amicus state is that a state's duty to desegregate higher education should be determined by the scope of the state's violation. The parameters of that duty under the Fourteenth Amendment and when that duty has been met would help guide state higher education systems and the court.

CONCLUSION

Based on the foregoing authorities and analysis, the amicus state urges this Court to reverse the decision of the United States Court of Appeals for the Fifth Circuit and hold that a state has a duty under the Fourteenth Amendment to remedy the present effects of past segregation in higher education. The amicus state also urges

this Court to give general guidelines for states and courts as to how this duty might be satisfied.

Respectfully submitted,

CHARLES W. BURSON
Attorney General and Reporter

J. KNOX WALKUP
Solicitor General

CHRISTINE MODISHER
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0485
615-741-4710

APPENDIX A

1A

1990

DESEGREGATION PROGRESS REPORT

Prepared by

THE TENNESSEE HIGHER EDUCATION COMMISSION

THE UNIVERSITY OF TENNESSEE

THE TENNESSEE BOARD OF REGENTS

for the

DESEGREGATION MONITORING COMMITTEE

MAY 3, 1991

[43A]

TABLE 17

COMPARISON OF COMMISSION RECOMMENDATIONS FOR DESEGREGATION ACTIVITIES BY INSTITUTION, FY 88 THROUGH FY 92

	FY 88	FY 89	FY 90	FY 91	FY 92
APSU	$110,000	$113,000	$116,000	$119,000	$125,000
ETSU	196,000	249,000	453,000	457,000	510,000
MSU	572,000	666,000	687,000	709,000	848,000
MTSU	353,000	368,000	383,000	399,000	420,000
TSU	605,000	617,000	1,207,000	1,261,000	1,469,000
TTU	160,000	149,000	153,000	158,000	164,000
SUBTOTAL TBR UNIVERSITIES	$1,996,000	$2,162,000	$2,999,000	$3,103,000	$3,536,000
CSTCC	$71,000	$74,000	$77,000	$80,000	$84,000
CLSCC	15,000	15,000	15,000	26,000	28,000
COSCC	39,000	36,000	37,000	38,000	39,000
DSCC	25,000	24,000	27,000	26,000	27,000
JSCC	52,000	54,000	56,000	58,000	60,000
MSCC	17,000	17,000	18,000	30,000	32,000
RSCC	15,000	15,000	15,000	15,000	25,000
SSCC	42,000	43,000	44,000	46,000	47,000
VSCC	21,000	21,000	21,000	21,000	25,000
WSCC	17,000	17,000	17,000	28,000	30,000
SUBTOTAL COMM. COLLEGES	$314,000	$316,000	$325,000	$368,000	$397,000
NSTCC					$25,000
NSTI					25,000
PSTCC					25,000
STIM					25,000
					$100,000
SUBTOTAL TECH INST & COMM. COLLEGES					$497,000
TN BOARD OF REGENTS ADMN.	$230,000	$230,000	$230,000	$230,000	$230,000
SUBTOTAL TN BOARD OF REGENTS	$2,540,000	$2,708,000	$3,554,000	$3,701,000	$4,263,000

MBW:gm

[44A]

TABLE 17

COMPARISON OF COMMISSION RECOMMENDATIONS FOR DESEGRATION ACTIVITIES BY INSTITUTION, FY 88 THROUGH FY 92

	FY88	FY 89	FY 90	FY 91	FY 92
UTC	$237,000	$244,000	$252,000	$263,000	$274,000
UTK	676,000	685,000	713,000	743,000	807,000
UTM	184,000	190,000	195,000	202,000	209,000
SUBTOTAL	$1,097,000	$1,119,000	$1,160,000	$1,208,000	$1,290,000
UTMphs	$438,000	$472,000	$834,000	$837,000	$793,000
UTSI	79,000	68,000	69,000	69,000	70,000
UT Agriculture	44,000	44,000	44,000	37,000	37,000
UT Vet. Med.	45,000	46,000	68,000	70,000	91,000
UT IPS, CTAS, MTAS	0	0	0	9,000	9,000
SUBTOTAL	$606,000	$630,000	$1,015,000	$1,022,000	$1,000,000
UT ADMIN	$ -	$ -	$ -	$ -	$ -
SUBTOTAL UT	$1,703,000	$1,749,000	$2,175,000	$2,230,000	$2,290,000
MED/DEN/PHARM COND GRANT PROGRAM	$746,000	$871,000	$ *	$ *	$ *
TOTAL	$4,989,000	$5,328,000	$5,729,000	$5,931,000	$6,553,000

In addition to the amounts shown above: (1) For FY87, $5,225,000 was recommended for capital projects at TSU. For FY88, $746,000 was recommended for Campus Outside Improvements at TSU, $137,000 was recommended for Outside Lighting Installation at TSU. For FY89, $15.0 million was recommended for TSU capital outlay projects. For FY 90, $22.0 million was recommended for TSU capital outlay projects, and for FY 91, an additional $24.5 million is recommended. For FY 92, the Commission has recommended funding for TSU capital outlay projects totaling $24.2 million. (2) For FY86, an increase of $2 million was recommended for TSAC funding and that amount addresses some of the concerns raised in *Geier* provision IIG.

* The program was expanded to include pharmacy in FY 88. In FY 90, at ETSU and UTMphs, the Black Conditional Grant Program became a Black Tennessean Scholarship Program. The original program will remain in effect at Meharry, $310,000, and Vanderbilt, $20,000, for FY 91 and 92.

Note: The Regional Minority Teacher Education Program is recommended for third-year funding elsewhere for $250,000.

APPENDIX B

[1A]

TABLE I

FALL 1988 THROUGH FALL 1990 HEADCOUNT ENROLLMENT AND EMPLOYMENT IN TENNESSEE PUBLIC INSTITUTIONS AND ENROLLMENT AND EMPLOYMENT OBJECTIVES

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1988 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
TBR UNIVERSITIES						
APSU	Undergraduates	4,775	770	3,774	231	16.13%
	Graduates	393	31	351	11	7.89%
	Total	5,168	801	4,125	242	15.50%
	Administrators	28	3	25	0	10.71%
	Faculty	200	13	178	9	6.50%
	Professionals	78	6	72	0	7.69%
ETSU	Undergraduates	9,218	228	8,554	436	2.47%
	Graduates	1,536	44	1,363	129	2.86%
	Total	10,754	272	9,917	565	2.53%
	Administrators	59	4	55	0	6.78%
	Faculty	429	12	404	13	2.80%
	Professionals	105	4	101	0	3.81%
ETSU MED.	Medicine	229	24	188	17	10.48%
	Administrators	10	1	8	1	10.00%
	Faculty	135	2	121	12	1.48%
	Professionals	65	1	63	1	1.54%
MSU	Undergraduates	16,179	3,004	12,841	334	18.57%
	Graduates	3,682	423	3,045	214	11.49%
	Law	409	31	372	6	7.58%
	Total	20,270	3,458	16,258	554	17.06%
	Administrators	125	13	111	1	10.40%
	Faculty	752	42	667	43	5.59%
	Professionals	317	38	272	7	11.99%
MTSU	Undergraduates	11,850	1,042	10,568	240	8.79%
	Graduates	1,315	69	1,202	44	5.25%
	Total	13,165	1,111	11,770	284	8.44%
	Administrators	52	3	48	1	5.77%
	Faculty	489	34	437	18	6.95%
	Professionals	79	8	71	0	10.13%

FALL 1989

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
TBR UNIVERSITIES						
APSU	Undergraduates	5,891	1,066	4,462	363	18.10%
	Graduates	401	29	361	11	7.21%
	Total	6,292	1,095	4,823	374	17.40%
	Administrators	29	4	25	0	13.79%
	Faculty	210	17	185	8	8.10%
	Professionals	86	7	79	0	8.14%
ETSU	Undergraduates	9,643	276	8,916	451	2.86%
	Graduates	1,542	32	1,374	136	2.08%
	Total	11,185	308	10,290	587	2.75%
	Administrators	63	5	58	0	7.94%
	Faculty	436	14	410	12	3.21%
	Professionals	110	9	101	0	8.18%
ETSU MED.	Medicine	226	24	186	16	10.62%
	Administrators	10	2	8	0	20.00%
	Faculty	125	2	113	10	1.60%
	Professionals	58	1	57	0	1.72%
MSU	Undergraduates	16,312	3,064	12,932	316	18.78%
	Graduates	3,862	397	3,204	261	10.28%
	Law	439	30	405	4	6.83%
	Total	20,613	3,491	16,541	581	16.94%
	Administrators	125	18	106	1	14.40%
	Faculty	770	43	673	54	5.58%
	Professionals	351	47	295	9	13.39%
MTSU	Undergraduates	12,744	1,170	11,301	273	9.18%
	Graduates	1,392	81	1,257	54	5.82%
	Total	14,136	1,251	12,558	327	8.85%
	Administrators	49	5	43	1	10.20%
	Faculty	515	34	459	22	6.60%
	Professionals	107	10	97	0	9.35%

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1990 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK	OBJECT. 1990-91 %OTHER RACE	LONG-RNGE OBJECT. %OTHER RACE (SEE ****)
TBR UNIVERSITIES								
APSU	Undergraduates	5,971	1,077	4,616	278	18.04%	17.00	17.00
	Graduates	376	26	345	5	6.91%	6.03	8.42
	Total	6,347	1,103	4,961	283	17.38%		
	Administrators	27	3	24	0	11.11%	9.70	
	Faculty	222	17	195	10	7.66%	5.30	
	Professionals	85	12	73	0	14.12%	11.60	
ETSU	Undergraduates	9,761	307	8,993	461	3.15%	3.35	4.00
	Graduates	1,597	37	1,409	151	2.32%	3.10	3.10
	Total	11,358	344	10,402	612	3.03%		
	Administrators	58	3	55	0	5.17%	4.80	
	Faculty	441	13	416	12	2.95%	3.00	
	Professionals	119	10	109	0	8.40%	6.30	
ETSU MED.	Medicine	236	29	194	13	12.29%	8.10	8.10
	Administrators	8	2	6	0	25.00%	15.00	
	Faculty	90	3	80	7	3.33%	2.90	
	Professionals	60	1	58	1	1.67%	6.30	
MSU	Undergraduates	16,209	3,263	12,627	319	20.13%	30.15	40.40
	Graduates	4,049	475	3,297	277	11.73%	20.60	26.56
	Law	430	28	400	2	6.51%	9.00	9.60
	Total	20,688	3,766	16,324	598	18.20%		
	Administrators	118	16	100	2	13.56%	15.90	
	Faculty	775	45	678	52	5.81%	5.00	
	Professionals	360	47	304	9	13.06%	12.70	
MTSU	Undergraduates	13,428	1,250	11,866	312	9.31%	9.61	11.50
	Graduates	1,437	70	1,299	68	4.87%	7.50	9.00
	Total	14,865	1,320	13,165	380	8.88%		
	Administrators	51	8	42	1	15.69%	11.10	
	Faculty	556	40	488	28	7.19%	6.90	
	Professionals	119	14	105	0	11.76%	7.10	

[2A]

TABLE I

FALL 1988 THROUGH FALL 1990 HEADCOUNT ENROLLMENT AND EMPLOYMENT IN TENNESSEE PUBLIC !NSTITUTIONS AND ENROLLMENT AND EMPLOYMENT OBJECTIVES

		FALL 1988				
INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
TSU***	Undergraduates	6,440	4,354	1,851	235	67.61%
	Graduates	913	262	607	44	28.70%
	Total	7,353	4,616	2,458	279	62.78%
	Administrators	34	25	8	1	73.53%
	Faculty	328	158	136	34	48.17%
	Professionals	123	98	24	1	79.67%
TTU	Undergraduates	7,001	223	6,629	149	3.19%
	Graduates	900	34	761	105	3.78%
	Total	7,901	257	7,390	254	3.25%
	Administrators	70	4	63	3	5.71%
	Faculty	330	15	282	33	4.55%
	Professionals	124	13	108	3	10.48%
TOTAL TBR UNIV. (WITH TSU)	Undergraduates	55,463	9,621	44,217	1,625	17.35%
	Graduates	8,739	863	7,329	547	9.88%
	Law	409	31	372	6	7.58%
	Medicine	229	24	188	17	10.48%
	Total	64,840	10,539	52,106	2,195	16.25%
	Administrators	378	53	318	7	14.02%
	Faculty	2,663	276	2,225	162	10.36%
	Professionals	891	168	711	12	18.86%
TOTAL TBR UNIV. (W/O TSU)	Undergraduates	49,023	5,267	42,366	1,390	10.74%
	Graduates	7,826	601	6,722	503	7.68%
	Law	409	31	372	6	7.58%
	Medicine	229	24	188	17	10.48%
	Total	57,487	5,923	49,648	1,916	10.30%
	Administrators	344	28	310	6	8.14%
	Faculty	2,335	118	2,089	128	5.05%
	Professionals	768	70	687	11	9.11%

FALL 1989

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
TSU***	Undergraduates	6,442	4,427	1,802	213	68.72%
	Graduates	920	258	606	56	28.04%
	Total	7,362	4,685	2,408	269	63.64%
	Administrators	36	23	13	0	63.89%
	Faculty	333	168	139	26	50.45%
	Professionals	119	94	24	1	78.99%
TTU	Undergraduates	6,859	216	6,479	164	3.15%
	Graduates	1,204	37	1,065	102	3.07%
	Total	8,063	253	7,544	266	3.14%
	Administrators	73	5	66	2	6.85%
	Faculty	344	16	305	23	4.65%
	Professionals	119	13	104	2	10.92%
TOTAL TBR UNIV. (WITH TSU)	Undergraduates	57,891	10,219	45,892	1,780	17.65%
	Graduates	9,321	834	7,867	620	8.95%
	Law	439	30	405	4	6.83%
	Medicine	226	24	186	16	10.62%
	Total	67,877	11,107	54,350	2,420	16.36%
	Administrators	385	62	319	4	16.10%
	Faculty	2,733	294	2,284	155	10.76%
	Professionals	950	181	757	12	19.05%
TOTAL TBR UNIV. (W/O TSU)	Undergraduates	51,449	5,792	44,090	1,567	11.26%
	Graduates	8,401	576	7,261	564	6.86%
	Law	439	30	405	4	6.83%
	Medicine	226	24	186	16	10.62%
	Total	60,515	6,422	51,942	2,151	10.61%
	Administrators	349	39	306	4	11.17%
	Faculty	2,400	126	2,145	129	5.25%
	Professionals	831	87	733	11	10.47%

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1990 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK	OBJECT. 1990-91 %OTHER RACE	LONG-RNGE OBJECT. %OTHER RACE (SEE ****)
TSU***	Undergraduates	6,347	4,277	1,880	190	67.39%	45.00	61.30*
	Graduates	1,046	311	669	66	29.73%	71.44	76.79
	Total	7,393	4,588	2,549	256	62.06%		
	Administrators	35	22	13	0	62.86%	50.80	
	Faculty	337	167	146	24	49.55%	51.00	
	Professionals	111	90	21	0	81.08%	39.00	
TTU	Undergraduates	7,150	246	6,734	170	3.44%	6.00	6.80*
	Graduates	984	32	841	111	3.25%	2.55	3.00
	Total	8,134	278	7,575	281	3.42%		
	Administrators	66	6	58	2	9.09%	7.80	
	Faculty	342	16	303	23	4.68%	3.70	
	Professionals	123	13	107	3	10.57%	13.20	
TOTAL TBR UNIV. (WITH TSU)	Undergraduates	58,866	10,420	46,716	1,730	17.70%		
	Graduates	9,489	951	7,860	678	10.02%		
	Law	430	28	400	2	6.51%		
	Medicine	236	29	194	13	12.29%		
	Total	69,021	11,428	55,170	2,423	16.56%		
	Administrators	363	60	298	5	16.53%		
	Faculty	2,763	301	2,306	156	10.89%		
	Professionals	977	187	777	13	19.14%		
TOTAL TBR UNIV. (W/O TSU)	Undergraduates	52,519	6,143	44,836	1,540	11.70%		
	Graduates	8,443	640	7,191	612	7.58%		
	Law	430	28	400	2	6.51%		
	Medicine	236	29	194	13	12.29%		
	Total	61,628	6,840	52,621	2,167	11.10%		
	Administrators	328	38	285	5	11.59%		
	Faculty	2,426	134	2,160	132	5.52%		
	Professionals	866	97	756	13	11.20%		

[3A]

TABLE I

FALL 1988 THROUGH FALL 1990 HEADCOUNT ENROLLMENT AND EMPLOYMENT IN TENNESSEE PUBLIC INSTITUTIONS AND ENROLLMENT AND EMPLOYMENT OBJECTIVES

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1988 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
TBR COMMUNITY COLLEGES						
CSTCC	Undergraduates	6,391	699	5,606	86	10.94%
	Administrators	8	1	7	0	12.50%
	Faculty	151	21	129	1	13.91%
	Professionals	50	5	45	0	10.00%
CLSCC	Undergraduates	2,977	150	2,780	47	5.04%
	Administrators	15	2	13	0	13.33%
	Faculty	67	4	61	2	5.97%
	Professionals	18	4	13	1	22.22%
COSCC	Undergraduates	2,667	218	2,421	28	8.17%
	Administrators	11	2	9	0	18.18%
	Faculty	66	7	58	1	10.61%
	Professionals	21	1	18	2	4.76%
DSCC	Undergraduates	1,742	209	1,519	14	12.00%
	Administrators	9	1	8	0	11.11%
	Faculty	43	7	36	0	16.28%
	Professionals	16	1	15	0	6.25%
JSCC	Undergraduates	2,774	355	2,410	9	12.80%
	Administrators	11	1	10	0	9.09%
	Faculty	74	7	67	0	9.46%
	Professionals	10	2	8	0	20.00%
MSCC	Undergraduates	2,392	129	2,241	22	5.39%
	Administrators	19	2	17	0	10.53%
	Faculty	50	3	47	0	6.00%
	Professionals	5	2	3	0	40.00%
RSCC	Undergraduates	3,853	108	3,706	39	2.80%
	Administrators	6	1	5	0	16.67%
	Faculty	88	2	86	0	2.27%
	Professionals	34	5	29	0	14.71%

FALL 1989

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
TBR COMMUNITY COLLEGES						
CSTCC	Undergraduates	7,412	829	6,470	113	11.18%
	Administrators	7	1	6	0	14.29%
	Faculty	136	22	113	1	16.18%
	Professionals	55	6	49	0	10.91%
CLSCC	Undergraduates	3,098	169	2,894	35	5.46%
	Administrators	23	2	21	0	8.70%
	Faculty	65	5	57	3	7.69%
	Professionals	21	4	16	1	19.05%
COSCC	Undergraduates	3,053	219	2,794	40	7.17%
	Administrators	12	3	9	0	25.00%
	Faculty	71	9	60	2	12.68%
	Professionals	24	2	21	1	8.33%
DSCC	Undergraduates	1,851	220	1,607	24	11.89%
	Administrators	11	2	9	0	18.18%
	Faculty	44	6	38	0	13.64%
	Professionals	16	3	13	0	18.75%
JSCC	Undergraduates	3,010	400	2,592	18	13.29%
	Administrators	12	3	9	0	25.00%
	Faculty	74	7	67	0	9.46%
	Professionals	10	1	9	0	10.00%
MSCC	Undergraduates	2,544	147	2,363	34	5.78%
	Administrators	19	2	17	0	10.53%
	Faculty	54	3	51	0	5.56%
	Professionals	12	2	10	0	16.67%
RSCC	Undergraduates	4,319	127	4,156	36	2.94%
	Administrators	6	1	5	0	16.67%
	Faculty	107	7	99	1	6.54%
	Professionals	39	5	34	0	12.82%

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1990 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK	OBJECT. 1990-91 %OTHER RACE	LONG-RNGE OBJECT. %OTHER RACE (SEE ****)
TBR COMMUNITY COLLEGES								
CSTCC	Undergraduates	7,793	843	6,832	118	10.82%	14.00	15.30*
	Administrators	7	1	6	0	14.29%	11.10	
	Faculty	139	21	117	1	15.11%	16.00	
	Professionals	56	6	50	0	10.71%	8.00	
CLSCC	Undergraduates	3,315	148	3,128	39	4.46%	4.40	5.50*
	Administrators	22	2	20	0	9.09%	6.70	
	Faculty	72	6	64	2	8.33%	5.00	
	Professionals	20	4	15	1	20.00%	16.70	
COSCC	Undergraduates	3,402	222	3,133	47	6.53%	5.60	5.60*
	Administrators	11	3	8	0	27.27%	20.00	
	Faculty	79	10	66	3	12.66%	16.90	
	Professionals	22	2	19	1	9.09%	13.50	
DSCC	Undergraduates	1,993	239	1,733	21	11.99%	14.90	14.90*
	Administrators	11	2	9	0	18.18%	20.00	
	Faculty	45	4	41	0	8.89%	15.60	
	Professionals	19	5	14	0	26.32%	20.00	
JSCC	Undergraduates	3,252	443	2,784	25	13.62%	16.75	21.00*
	Administrators	14	2	12	0	14.29%	14.30	
	Faculty	77	8	69	0	10.39%	10.30	
	Professionals	13	3	10	0	23.08%	23.80	
MSCC	Undergraduates	2,767	153	2,580	34	5.53%	5.40	5.40*
	Administrators	18	2	16	0	11.11%	8.70	
	Faculty	50	4	54	0	6.90%	5.50	
	Professionals	11	1	10	0	9.09%	15.40	
RSCC	Undergraduates	4,928	141	4,734	53	2.86%	3.80	4.20*
	Administrators	5	1	4	0	20.00%	11.70	
	Faculty	120	8	111	1	6.67%	6.50	
	Professionals	44	5	39	0	11.36%	10.30	

[4A]

TABLE I

FALL 1988 THROUGH FALL 1990 HEADCOUNT ENROLLMENT AND EMPLOYMENT IN TENNESSEE PUBLIC INSTITUTIONS AND ENROLLMENT AND EMPLOYMENT OBJECTIVES

		FALL 1988				
INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
SSCC	Undergraduates	3,822	2,161	1,615	46	56.54%
	Administrators	25	15	10	0	60.00%
	Faculty	112	38	70	4	33.93%
	Professionals	21	8	13	0	38.10%
VSCC	Undergraduates	3,474	169	3,236	69	4.86%
	Administrators	9	2	7	0	22.22%
	Faculty	82	13	69	0	15.85%
	Professionals	19	3	16	0	15.79%
WSCC	Undergraduates	3,513	95	3,373	45	2.70%
	Administrators	9	1	8	0	11.11%
	Faculty	83	7	73	3	8.43%
	Professionals	35	5	28	2	14.29%
TOTAL TBR COMMUNITY COLLEGES (WITH SSCC)	Undergraduates	33,605	4,293	28,907	405	12.77%
	Administrators	122	28	94	0	22.95%
	Faculty	816	109	696	11	13.36%
	Professionals	229	36	188	5	15.72%
TOTAL TBR COMMUNITY COLLEGES (W/O SSCC)	Undergraduates	29,783	2,132	27,292	359	7.16%
	Administrators	97	13	84	0	13.40%
	Faculty	704	71	626	7	10.09%
	Professionals	208	28	175	5	13.46%
TBR SYSTEM STAFF	Administrators	19	3	16	0	15.79%
	Professionals	19	6	12	1	31.58%

FALL 1989

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
SSCC	Undergraduates	4,216	2,399	1,713	104	56.90%
	Administrators	27	15	12	0	55.56%
	Faculty	112	34	74	4	30.36%
	Professionals	28	14	13	1	50.00%
VSCC	Undergraduates	3,670	194	3,412	64	5.29%
	Administrators	8	2	6	0	25.00%
	Faculty	87	13	74	0	14.94%
	Professionals	20	4	16	0	20.00%
WSCC	Undergraduates	4,220	150	4,026	44	3.55%
	Administrators	9	1	8	0	11.11%
	Faculty	88	8	78	2	9.09%
	Professionals	35	4	30	1	11.43%
TOTAL TBR COMMUNITY COLLEGES (WITH SSCC)	Undergraduates	37,393	4,854	32,027	512	12.98%
	Administrators	134	32	102	0	23.88%
	Faculty	838	114	711	13	13.60%
	Professionals	260	45	211	4	17.31%
TOTAL TBR COMMUNITY COLLEGES (W/O SSCC)	Undergraduates	33,177	2,455	30,314	408	7.40%
	Administrators	107	17	90	0	15.89%
	Faculty	726	80	637	9	11.02%
	Professionals	232	31	198	3	13.36%
TBR SYSTEM STAFF	Administrators	21	3	18	0	14.29%
	Professionals	21	5	15	1	23.81%

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1990 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK	OBJECT. 1990-91 %OTHER RACE	LONG-RNGE OBJECT. %OTHER RACE (SEE ****)
SSCC	Undergraduates	4,763	2,599	2,053	111	54.57%	49.50	59.30*
	Administrators	27	13	14	0	48.15%	56.40	
	Faculty	104	31	68	5	29.81%	65.10	
	Professionals	28	18	9	1	64.29%	58.50	
VSCC	Undergraduates	4,160	236	3869	55	5.67%	6.40	9.10*
	Administrators	8	2	6	0	25.00%	18.20	
	Faculty	91	14	77	0	15.38%	15.80	
	Professionals	23	5	18	0	21.74%	25.00	
WSCC	Undergraduates	4,567	138	4,382	47	3.02%	2.80	2.90*
	Administrators	8	1	7	0	12.50%	9.00	
	Faculty	96	10	84	2	10.42%	9.20	
	Professionals	36	4	31	1	11.11%	10.80	
TOTAL TBR COMMUNITY COLLEGES (WITH SSCC)	Undergraduates	40,940	5,162	35,228	550	12.61%		
	Administrators	131	29	102	0	22.14%		
	Faculty	881	116	751	14	13.17%		
	Professionals	272	53	215	4	19.49%		
TOTAL TBR COMMUNITY COLLEGES (W/O SSCC)	Undergraduates	36,177	2,563	33,175	439	7.08%		
	Administrators	104	16	88	0	15.38%		
	Faculty	777	85	683	9	10.94%		
	Professionals	244	35	206	3	14.34%		
TBR SYSTEM STAFF	Administrators	20	4	16	0	20.00%	13.30	
	Professionals	21	6	13	2	28.57%	28.50	

[5A]

TABLE I

FALL 1988 THROUGH FALL 1990 HEADCOUNT ENROLLMENT AND EMPLOYMENT IN TENNESSEE PUBLIC INSTITUTIONS AND ENROLLMENT AND EMPLOYMENT OBJECTIVES

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1988 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
UNIVERSITY OF TENNESSEE						
UTC	Undergraduates	6,199	689	5,295	215	11.11%
	Graduates	1,327	81	1,192	54	6.10%
	Total	7,526	770	6,487	269	10.23%
	Administrators	114	11	101	2	9.65%
	Faculty	284	18	256	10	6.34%
	Professionals	101	16	82	3	15.84%
UTK**	Undergraduates	18,770	863	17,479	428	4.60%
	Graduates	5,158	268	4,460	430	5.20%
	Law	462	36	420	6	7.79%
	Vet. Medicine	178	2	176	0	1.12%
	Total	24,568	1,169	22,535	864	4.76%
	Administrators	324	25	297	2	7.72%
	Faculty	1,482	50	1,345	87	3.37%
	Professionals	788	41	688	59	5.20%
UTM	Undergraduates	4,367	598	3,645	124	13.69%
	Graduates	286	11	269	6	3.85%
	Total	4,653	609	3,914	130	13.09%
	Administrators	64	3	61	0	4.69%
	Faculty	234	4	216	14	1.71%
	Professionals	58	7	50	1	12.07%
UTMHSC	Undergraduates	326	34	286	6	10.43%
	Graduates	244	25	180	39	10.25%
	Dentistry	318	15	285	18	4.72%
	Medicine	608	28	539	41	4.61%
	Pharmacy	276	12	255	9	4.35%
	Total	1,772	114	1,545	113	6.43%
	Administrators	142	7	131	4	4.93%
	Faculty	756	36	670	50	4.76%
	Professionals	1,343	118	1,139	86	8.79%

FALL 1989

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
UNIVERSITY OF TENNESSEE						
UTC	Undergraduates	6,595	672	5,688	235	10.19%
	Graduates	969	53	875	41	5.47%
	Total	7,564	725	6,563	276	9.58%
	Administrators	114	10	102	2	8.77%
	Faculty	282	17	254	11	6.03%
	Professionals	98	15	82	1	15.31%
UTK**	Undergraduates	19,068	900	17,709	459	4.72%
	Graduates	5,794	313	4,984	497	5.40%
	Law	479	39	438	2	8.14%
	Vet. Medicine	171	4	165	2	2.14%
	Total	25,512	1,256	23,296	960	4.92%
	Administrators	335	27	306	2	8.06%
	Faculty	1,411	56	1,271	84	3.97%
	Professionals	797	46	682	69	5.77%
UTM	Undergraduates	4,716	630	3,951	135	13.36%
	Graduates	392	26	358	8	6.63%
	Total	5,108	656	4,309	143	12.84%
	Administrators	60	3	57	0	5.00%
	Faculty	238	6	221	11	2.52%
	Professionals	59	10	48	1	16.95%
UTMHSC	Undergraduates	315	43	263	9	13.65%
	Graduates	245	19	179	47	7.76%
	Dentistry	307	12	276	19	3.91%
	Medicine	599	44	508	47	7.35%
	Pharmacy	281	16	255	10	5.69%
	Total	1,747	134	1,481	132	7.67%
	Administrators	132	5	123	4	3.79%
	Faculty	772	41	687	44	5.31%
	Professionals	1,376	127	1,146	103	9.23%

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1990 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK	OBJECT. 1990-91 %OTHER RACE	LONG-RNGE OBJECT. %OTHER RACE (SEE ****)
UNIVERSITY OF TENNESSEE								
UTC	Undergraduates	6,698	677	5,774	247	10.11%	15.00	16.80
	Graduates	1,027	65	909	53	6.33%	10.80	15.80
	Total	7,725	742	6,683	300	9.61%		
	Administrators	112	9	102	1	8.04%	9.30	
	Faculty	285	18	255	12	6.32%	7.30	
	Professionals	71	15	55	1	21.13%	15.20	
UTK**	Undergraduates	19,537	997	18,035	505	5.10%	7.50	10.50
	Graduates	5,882	302	5,038	542	5.13%	5.10	6.00
	Law	471	36	431	4	7.64%	7.40	7.40
	Vet. Medicine	165	6	155	4	3.64%	4.30	8.70
	Total	26,055	1,341	23,659	1,055	5.15%		
	Administrators	312	27	285	0	8.65%	6.70	
	Faculty	1,166	49	1,053	64	4.20%	4.20	
	Professionals	480	35	431	14	7.29%	6.50	
UTM	Undergraduates	5,050	747	4,173	130	14.79%	17.00	18.40
	Graduates	313	23	285	5	7.35%	9.50	14.70
	Total	5,363	770	4,458	135	14.36%		
	Administrators	61	4	57	0	6.56%	5.10	
	Faculty	238	9	216	13	3.78%	1.60	
	Professionals	55	8	46	1	14.55%	9.50	
UTMHSC	Undergraduates	341	45	288	8	13.20%	11.20	14.20
	Graduates	264	26	177	61	9.85%	8.10	10.80
	Dentistry	301	17	260	24	5.65%	5.90	8.80
	Medicine	591	52	496	43	8.80%	5.30	8.90
	Pharmacy	288	25	255	8	8.68%	7.00	8.40
	Total	1,785	165	1,476	144	9.24%		
	Administrators	131	6	121	4	4.58%	7.00	
	Faculty	591	26	520	45	4.40%	3.50	
	Professionals	534	81	404	49	15.17%	11.90	

[6A]

TABLE I

FALL 1988 THROUGH FALL 1990 HEADCOUNT ENROLLMENT AND EMPLOYMENT IN TENNESSEE PUBLIC INSTITUTIONS AND ENROLLMENT AND EMPLOYMENT OBJECTIVES

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1988 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
UTMCK	Administrators	102	2	100	0	1.96%
	Faculty	111	1	99	11	0.90%
	Professionals	1,276	18	1,235	23	1.41%
INSTIT. OF AGRIC.	Administrators	47	2	45	0	4.26%
	Faculty	269	3	263	3	1.12%
	Professionals	553	24	519	10	4.34%
UT-WIDE ADMIN.	Administrators	95	3	92	0	3.16%
	Professionals	174	10	164	0	5.75%
TOTAL UT	Undergraduates	29,662	2,184	26,705	773	7.36%
	Graduates	7,015	385	6,101	529	5.49%
	Law	462	36	420	6	7.79%
	Dentistry	318	15	285	18	4.72%
	Medicine	608	28	539	41	4.61%
	Pharmacy	276	12	255	9	4.35%
	Vet. Medicine	178	2	176	0	1.12%
	Total	38,519	2,662	34,481	1,376	6.91%
	Administrators	888	53	827	8	5.97%
	Faculty	3,136	112	2,849	175	3.57%
	Professionals	4,293	234	3,877	182	5.45%
THEC STAFF	Administrators	12	2	10	0	16.67%
	Professionals	5	0	5	0	0.00%
GRAND TOTAL (WITH TSU & SSCC)	Undergraduates	118,730	16,098	99,829	2,803	13.56%
	Graduates	15,754	1,248	13,430	1,076	7.92%
	Law	871	67	792	12	7.69%
	Dentistry	318	15	285	18	4.72%
	Medicine	837	52	727	58	6.21%
	Pharmacy	276	12	255	9	4.35%
	Vet. Medicine	178	2	176	0	1.12%
	Total	136,964	17,494	115,494	3,976	12.77%
	Administrators	1,419	139	1,265	15	9.80%
	Faculty	6,615	497	5,770	348	7.51%
	Professionals	5,437	444	4,793	200	8.17%

FALL 1989

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
UTMCK	Administrators	109	2	107	0	1.83%
	Faculty	115	1	104	10	0.87%
	Professionals	1,359	27	1,306	26	1.99%
INSTIT. OF AGRIC.	Administrators	47	2	45	0	4.26%
	Faculty	263	4	256	3	1.52%
	Professionals	565	26	528	11	4.60%
UT-WIDE ADMIN.	Administrators	98	4	94	0	4.08%
	Professionals	160	10	150	0	6.25%
TOTAL UT	Undergraduates	30,694	2,245	27,611	838	7.31%
	Graduates	7,400	411	6,396	593	5.55%
	Law	479	39	438	2	8.14%
	Dentistry	307	12	276	19	3.91%
	Medicine	599	44	508	47	7.35%
	Pharmacy	281	16	255	10	5.69%
	Vet. Medicine	171	4	165	2	2.34%
	Total	39,931	2,771	35,649	1,511	6.94%
	Administrators	895	53	834	8	5.92%
	Faculty	3,081	125	2,793	163	4.06%
	Professionals	4,414	261	3,942	211	5.91%
THEC STAFF	Administrators	12	2	10	0	16.67%
	Professionals	8	2	6	0	25.00%
GRAND-TOTAL (WITH TSU & SSCC)	Undergraduates	125,978	17,318	105,530	3,130	13.75%
	Graduates	16,721	1,245	14,263	1,213	7.45%
	Law	918	69	843	6	7.52%
	Dentistry	307	12	276	19	3.91%
	Medicine	825	68	694	63	8.24%
	Pharmacy	281	16	255	10	5.69%
	Vet. Medicine	171	4	165	2	2.34%
	Total	145,201	18,732	122,026	4,443	12.90%
	Administrators	1,447	152	1,283	12	10.50%
	Faculty	6,652	533	5,788	331	8.01%
	Professionals	5,653	494	4,931	228	8.74%

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1990 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK	OBJECT. 1990-91 %OTHER RACE	LONG-RNGE OBJECT. %OTHER RACE (SEE ****)
UTMCK	Administrators	114	2	112	0	1.75%	2.50	
	Faculty	87	1	76	10	1.15%	4.30	
	Professionals	1,204	25	1,153	26	2.08%	6.60	
INSTIT. OF AGRIC.	Administrators	44	1	43	0	2.27%	5.00	
	Faculty	268	3	263	2	1.12%	3.40	
	Professionals	541	24	509	8	4.44%	7.40	
UT-WIDE ADMIN.	Administrators	94	5	89	0	5.32%	6.40	
	Professionals	157	11	146	0	7.01%	5.30	
TOTAL UT	Undergraduates	31,626	2,466	28,270	890	7.80%		
	Graduates	7,486	416	6,409	661	5.56%		
	Law	471	36	431	4	7.64%		
	Dentistry	301	17	260	24	5.65%		
	Medicine	591	52	496	43	8.80%		
	Pharmacy	288	25	255	8	8.68%		
	Vet. Medicine	165	6	155	4	3.64%		
	Total	40,928	3,018	36,276	1,634	7.37%		
	Administrators	868	54	809	5	6.22%		
	Faculty	2,635	106	2,383	146	4.02%		
	Professionals	3,042	199	2,744	99	6.54%		
THEC STAFF	Administrators	11	2	9	0	18.18%	15.80	
	Professionals	8	2	6	0	25.00%	15.80	
GRAND TOTAL (WITH TSU & SSCC)	Undergraduates	131,432	18,048	110,214	3,170	13.73%		
	Graduates	16,975	1,367	14,269	1,339	8.05%		
	Law	901	64	831	6	7.10%		
	Dentistry	301	17	260	24	5.65%		
	Medicine	827	81	690	56	9.79%		
	Pharmacy	288	25	255	8	8.68%		
	Vet. Medicine	165	6	155	4	3.64%		
	Total	150,889	19,608	126,674	4,607	12.99%		
	Administrators	1,393	149	1,234	10	10.70%		
	Faculty	6,279	523	5,440	316	8.33%		
	Professionals	4,320	447	3,755	118	10.35%		

[7A]
TABLE I

FALL 1988 THROUGH FALL 1990 HEADCOUNT ENROLLMENT AND EMPLOYMENT IN TENNESSEE PUBLIC INSTITUTIONS AND ENROLLMENT AND EMPLOYMENT OBJECTIVES

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1988 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
GRAND TOTAL (W/O TSU & SSCC)	Undergraduates	108,468	9,583	96,363	2,522	8.83%
	Graduates	14,841	986	12,823	1,032	6.64%
	Law	871	67	792	12	7.69%
	Dentistry	318	15	285	18	4.72%
	Medicine	837	52	727	58	6.21%
	Pharmacy	276	12	255	9	4.35%
	Vet. Medicine	178	2	176	0	1.12%
	Total	125,789	10,717	111,421	3,651	8.52%
	Administrators	1,360	99	1,247	14	7.28%
	Faculty	6,175	301	5,564	310	4.87%
	Professionals	5,293	338	4,756	199	6.39%

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1989 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
GRAND TOTAL (W/O TSU & SSCC)	Undergraduates	115,320	10,492	102,015	2,813	9.10%
	Graduates	15,801	987	13,657	1,157	6.25%
	Law	918	69	843	6	7.52%
	Dentistry	307	12	276	19	3.91%
	Medicine	825	68	694	63	8.24%
	Pharmacy	281	16	255	10	5.69%
	Vet. Medicine	171	4	165	2	2.34%
	Total	133,623	11,648	117,905	4,070	8.72%
	Administrators	1,384	114	1,258	12	8.24%
	Faculty	6,207	331	5,575	301	5.33%
	Professionals	5,506	386	4,894	226	7.01%

INSTITUTIONS	STUDENT LEVELS & EMPLOYEES	FALL 1990 TOTAL ENROLL.	BLACK	WHITE	OTHER	% BLACK
GRAND TOTAL (W/O TSU & SSCC)	Undergraduates	120,322	11,172	106,281	2,869	9.29%
	Graduates	15,929	1,056	13,600	1,273	6.63%
	Law	901	64	831	6	7.10%
	Dentistry	301	17	260	24	5.65%
	Medicine	827	81	690	56	9.79%
	Pharmacy	288	25	255	8	8.68%
	Vet. Medicine	165	6	155	4	3.64%
	Total	138,733	12,421	122,072	4,240	8.95%
	Administrators	1,331	114	1,207	10	8.56%
	Faculty	5,838	325	5,226	287	5.57%
	Professionals	4,181	339	3,725	117	8.11%

NOTE: Employment date for Tennessee Board of Regents institutions are based upon October revised budgets. UT data as of October 1, 1990. Unrestricted full-time employment data have been included for 1990. For UT fall 1988 and 1989 data included all employees.

* Refinement based upon 1986 projections. If met, college-going desparity will have been addressed.

** Includes UTSI.

*** Beginning fall 1987 at TSU, reclassification of some positions was made from administrators to professional.

**** Other race here means black for all institutions except TSU and SSCC. For TSU and SSCC it means white.

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(8)

Nos. 90-6588 and 90-1205

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

JAKE AYERS, JR., *et al.*,

Petitioners,

v.

RAY MABUS, Governor
State of Mississippi, *et al.*,

Respondents.

UNITED STATES OF AMERICA,

Petitioners,

v.

RAY MABUS, Governor
State of Mississippi, *et al.*,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., AMERICAN CIVIL LIBERTIES UNION, AND THE NATIONAL CONFERENCE OF BLACK LAWYERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

JANELL M. BYRD
NAACP Legal Defense and
Educational Fund, Inc.
1275 K Street N.W.
Suite 301
Washington, D.C. 20005
(202) 682-1300

JOHN A. POWELL
American Civil Liberties
Union Foundation
132 W. 43rd Street
New York, NY 10036
(212) 944-9800

*JULIUS LEVONNE CHAMBERS
CHARLES STEVEN RALSTON
NORMAN J. CHACHKIN
NAACP Legal Defense and
Educational Fund, Inc.
99 Hudson Street
16th Floor
New York, NY 10013
(212) 219-1900

JOHN W. GARLAND
ADJOA AIYETORO
National Conference of
Black Lawyers
1926 6th Street, N.W.
Washington, D.C. 20001
(202) 387-5960

Counsel for Amicus Curiae

**Counsel of Record*

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

Nos. 90-6588 and 90-1205

In the

Supreme Court of the United States

October Term, 1991

Jake Ayers, Jr., *et al.*,

Petitioners,

v.

Ray Mabus, Governor
State of Mississippi, *et al.*,

Respondents.

United States of America,

Petitioners,

vs.

Ray Mabus, Governor,
State of Mississippi, *et al.*

Respondents.

MOTION OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., AMERICAN CIVIL LIBERTIES UNION, AND THE NATIONAL CONFERENCE OF BLACK LAWYERS FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

The NAACP Legal Defense and Educational, Fund, Inc. (LDF), the American Civil Liberties Union (ACLU), and the

National Conference for Black Lawyers (NCBL) respectfully move the Court for leave to file the attached brief as *amici curiae* in support of petitioners. Both the *Ayers* petitioners and the United States have consented to the filing of this brief. Respondents, Ray Mabus, Governor of the State of Mississippi, *et al.*, have not responded to request for consent.

The NAACP Legal Defense and Educational Fund, Inc. is a non-profit corporation established to assist African American citizens in securing their constitutional and civil rights. LDF has had a major role in litigation efforts challenging discrimination and segregation in education.[1] LDF successfully litigated the first court challenge to racial segregation in Mississippi's higher education system, *Meredith v. Fair*, 305 F.2d 343 (5th Cir.), *cert. denied*, 371 U.S. 828

[1]*See, e.g., Brown v. Board of Education*, 347 U.S. 483 (1954). LDF represented the plaintiffs in litigation that resulted in the initiation of desegregation efforts in public higher education systems in 18 states, including the State of Mississippi. *Adams v. Richardson*, 356 F. Supp. 92 (D.D.C.), *modified and aff'd unanimously en banc*, 480 F.2d 1159 (D.C. Cir. 1973), *dismissed sub. nom. Women's Equity Action League v. Cavazos*, 906 F.2d 742 (D.C. Cir. 1990). Other LDF higher education desegregation cases include: *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950); *Adams v. Lucy*, 228 F.2d 619 (5th Cir. 1955), *cert. denied*, 351 U.S. 931 (1956).

(1962). The questions presented here involve the interpretation of five cases litigated by LDF.[2]

The American Civil Liberties Union (ACLU) is a non-profit, non-partisan organization with nearly 300,000 members dedicated to principles of liberty and equality embodied in the Constitution. As part of its commitment to legal equality, the ACLU has long opposed any forms of state imposed racial discrimination.[3] This case raises fundamental questions about the constitutionality of state imposed segregation in higher education. Its proper resolution, therefore, is a matter of direct concern to the ACLU.

The National Conference of Black Lawyers (NCBL), founded in 1968, is an organization comprised of approximately 2,500 black lawyers and legal workers, many

[2]*Bazemore v. Friday*, 478 U.S. 385 (1986); *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968); *Geier v. Alexander*, 801 F.2d 799 (6th Cir. 1986); *Norris v. State Council of Higher Education for Virginia*, 327 F. Supp. 1368 (E.D. Va.), *aff'd mem.*, 404 U.S. 907 (1971); *Alabama State Teachers Association v. Alabama Public School and College Authority*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969).

[3]ACLU currently represents respondents in *Brown v. Board of Education*, 892 F.2d 851 (10th Cir. 1989), *petition for cert. filed*, 58 U.S.L.W. 3725 (U.S. April 26, 1990) (No. 89-1681), and *Pitts v. Freeman*, 887 F.2d 1438 (11th Cir. 1989), *cert. granted*, 111 S. Ct. 949 (Feb. 19, 1991) (No. 89-1290).

of whom are graduates of historically black colleges. NCBL's membership is engaged in legal and legislative efforts to increase educational opportunities and advancements for black and other minority persons. Several NCBL lawyers filed the original complaint in this case.

Given *amici's* substantial experience in school desegregation litigation, it is submitted that the brief will be of assistance to the Court. *Amici*, therefore request that the motion be granted.

Respectfully submitted,

/s/ Janell M. Byrd

Janell M. Byrd
NAACP Legal Defense and
Educational Fund, Inc.
1275 K Street, N.W.
Suite 301
Washington, DC 20005
(202) 682-1300

John A. Powell
American Civil Liberties
Union Foundation
132 W. 43rd Street
New York, NY 10036
(212) 944-9800

* Julius LeVonne Chambers
Charles Stephen Ralston
Norman J. Chachkin
NAACP Legal Defense and
Educational Fund, Inc.
99 Hudson Street
16th Floor
New York, NY 10013
(212) 219-1900

John W. Garland
Adjoa Aiyetoro
National Conference of
Black Lawyers
1926 6th Street, N.W.
Washington, D.C. 20001
(202) 387-5960

Counsel for Amicus Curiae
**Counsel of Record*

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Interest of Amici

Amici NAACP Legal Defense and Educational Fund, Inc., American Civil Liberties Union, and National Conference of Black Lawyers[1] have extensive experience in desegregation litigation and share a committment to the goal of equal educational opportunity. *Amici* believe that their views will be of assistance to the Court.

STATEMENT OF THE CASE

Introduction

In broad terms, this case presents the question whether the State of Mississippi has taken sufficient steps to satisfy its statutory and constitutional duties to dismantle the racially dual and discriminatory system of higher education that it created and maintained for more than a century. In determining whether the dual system or its vestiges continue to have discriminatory effects, the history of the development, scope and duration of Mississippi's dual educational system is the necessary backdrop. The details of that history, therefore, are provided in the factual statement below.

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[1]Each organization is described fully in the preceding Motion for Leave to File and incorporated by reference herein.

In *amici*'s view, race always has played an enormous role in shaping educational opportunities, and thus, life's opportunities, for the people of the State of Mississippi. In the 1870's Mississippi moved from enforced ignorance imposed upon its black population to a system of rigid segregation of blacks in grossly inferior educational systems. It is undisputed that this practice of rigid segregation and inequality continued unbreached at every educational level from the 1870's until at least 1962.

Pressured to abandon its discriminatory system, state officials engaged in "massive resistance" leading to widespread violence. Creative strategies instituted during the period of massive resistance and thereafter, as well as the continued existence of a dual structure itself, have successfully maintained Mississippi's segregated and profoundly unjust system of higher education, under which educational opportunities for the vast majority of black Mississippians are severely limited.

Today, 70% of Mississippi's black students are automatically excluded from its five historically white institutions (HWIs) of higher education by virtue of an

admissions test score requirement whose existence is indisputably rooted in intentional discrimination. Thus the vast majority of black students attending in-state public colleges are effectively limited to choosing among three historically black institutions (HBIs), which without apology Mississippi funds at a significantly lower rate than the three HWIs where 86% of its white college students are educated.

Mississippi at most has made meager efforts to change its dual system, as is evidenced by the limited success it has had. In 1974, in response to a notice from federal authorities that the state's higher education system remained racially dual and was in violation of Title VI of the Civil Rights Act of 1964, Mississippi submitted a "Plan of Compliance." However, the federal government found the plan inadequate. Mississippi proceeded to implement its inadequate plan, but refused to fully fund it.

More evident, in fact, than any attempts to dismantle the dual system, are Mississippi's efforts to maintain the dual system through the use of policies that are euphemistically labelled "race-neutral" only because their express racial characteristics have been eliminated. Those policies seize

upon the institutional and personal cumulative deficits born of the inequity of past discrimination as the very justification for perpetuating racial disparities.

Much more than "race-neutral" policies -- the thinly disguised tools of the massive resistance movement -- is required to eliminate "root and branch," the deep traces of a discriminatory system that has been so firmly implanted as Mississippi's. Nonetheless, a divided *en banc* Court of Appeals for the Fifth Circuit ruled that Mississippi can abandon even its meager efforts and need do no more. *Amici* urge the Court to reverse that decision and require affirmative measures to eliminate the vestiges of the dual system in order to provide black citizens of Mississippi full and equal rights to educational opportunities provided by the state.

STATEMENT OF RELEVANT FACTS[2]

I. *The Establishment and Maintenance of Mississippi's Racially Dual System from the Mid-1800's to 1962*

In 1823, Mississippi imposed a criminal prohibition on gatherings of blacks (free and slave) for the purpose of learning to read or write.[3] Most blacks, of course, were still enslaved in 1844 when the state established the University of Mississippi.[4] The school began operating in 1848, and in 1854 expanded to include a law school.[5] The legislature

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[2]We adopt the detailed factual review provided by the Ayers petitioners. The following abbreviations are used herein: United States' Petition Appendix ("PA"), Ayers Petitioners' Petition Appendix ("PPA"), United States' exhibits ("USX"), defendants' exhibits ("BDX"), Ayers plaintiffs' exhibits ("PX"), stipulations of the parties ("S."), and the trial transcript ("Tr."). The Joint Appendix was not completed in time to allow citation by *amici*.

[3]The statute provided an exception for attendance at religious services conducted by a white minister or attended by two "respectable" white persons appointed for that purpose and established a penalty of corporeal punishment up to 39 lashes for violations. Ch. 37, art. 3, § 2, *Mississippi Code of 1798 - 1848* (A. Hutchinson, 1848); Ch. 33, § 10, art. 51, *Revised Code of Mississippi* (1857)(re-enactment).

[4]The current names of the institutions are used in this section, except where otherwise indicated.

[5]The University of Mississippi opened its School of Medicine in 1903 (PA 110a).

mandated that the school serve whites only. (PA 109a-110a.)[6]

In 1871, Mississippi's Reconstruction Legislature[7] opened Alcorn State University for blacks. In 1878, with the entry of the Redeemer Legislature,[8] the school was designated as the state's land-grant college for blacks pursuant to the 1862 Morrill Land Grant Act, Ch. 314, 24 Stat. 440. (PA 110a-111a.)[9] That same year, the state established Mississippi State University and designated it as the land-grant college for whites (PA 111a).[10] Thereafter, the state established the

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[6]In 1846, Mississippi set up a system of common schools. Ch. 9, art. 37, *Mississippi Code of 1798-1848. See also,* ch. 9, art. 45 (¶ 1) *Mississippi Code of 1798-1848* (common schools for "free white youth").

[7]*See generally* W.E.B. DuBois, *Black Reconstruction in America* 431-51 (1935); E. Foner, *Reconstruction, America's Unfinished Revolution: 1863-1877* (1988).

[8]*Id.*

[9]The Redeemer Legislature also enacted a statute requiring racial segregation in the schools. 1878 Miss. Laws, ch. XIV, § 35. The requirement of racially separate schools was made part of Mississippi's Constitution in 1890. Miss. Const. of 1890, art. 2, § 207.

[10]State funding for Alcorn University has consistently been lower than that for Mississippi State. W.E. Trueheart, *The Consequences of Federal and State Resource Allocation and Development Policies for Traditionally Black Land-Grants Institutions: 1862-1954* 32-33 (University Microfilms International, Ann Arbor, Michigan) (1979). *See also* Brief of Alcorn State University National Alumni Association as Amicus Curiae in Support of Petitioners at 4-5.

Mississippi University for Women for whites in 1884, the University of Southern Mississippi for whites in 1910, and Delta State University for whites in 1924 (PA 111a-114a).

During this period of rapid expansion of educational opportunities for Mississippi's white population, persons of African descent comprised the majority of Mississippi's population.[11] The state, however, restricted educational opportunities for Mississippi's black majority.[12] As Mississippi's United States Senator in 1914, James K. Vardaman, a former Governor who at one point served as *ex officio* president of Alcorn, successfully argued against a

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[11]Blacks were a majority of the population in Mississippi from at least 1840 until 1940, when whites first showed a slim majority. *Sixth Census or Enumeration of the Inhabitants of the United States* 250, 252 (1841); *Seventh Census of the United States: 1850* 447 (1853); *Population of the United States in 1860* 264, 266 (1864); PX 200 at 351 [census data].

[12]These restrictions developed out of a fear that blacks would once again seek to exercise the vote -- blacks were disenfranchised by 1890 under the Mississippi Plan, *see Williams v. Mississippi,* 170 U.S. 213 (1898)(upholding exclusionary measures); C. Vann Woodward, *Origins of the New South: 1877-1919* 321-350 (1951) -- the belief that the limited funding available for education should be spent on whites -- *see* A. Kirwan, *Revolt of the Rednecks* 145 (1951) -- and a desire to protect and maintain the dominant position of the white race -- *id.* at 145-46 (Mississippi's Governor James K. Vardaman argued that money spent for Negro education was a "positive unkindness" because it "simply renders [the Negro] unfit for the work which the white man has prescribed, and which he will be forced to perform." "The negro (*sic*) . . . will not be permitted to rise above the station which he now fills.").

provision in the Smith-Lever Act of 1914, Ch. 79, 38 Stat. 372, that would have guaranteed equal funding for black land-grant colleges. Vardaman argued that the funding for blacks should be limited and controlled by whites:

> [T]he negro (*sic*) has never enjoyed any civilization except that which has been inculcated by the white man, and that civilization has lasted only so long as he was under the control and domination of the white man. When left absolutely to himself he has universally retrograded to the barbarism of the jungles.

51 Cong. Record 3, at 2652 (1914); *see also id.* at 2931.[13]

At the elementary and secondary level, the Mississippi State Superintendent of Education reported that for school year 1930-31, 98.3% of the total enrollment for black children was in the first eight grades, with 64% in grades one to three.[14] A summary of the values of school plants for 1929-30 shows $40,000,000 for white schools and $3,052,300 for blacks.[15] Of the total expenditures for elementary and

[13]With the discretion given to the states by Congress to allocate the Smith-Lever Act funds, Mississippi did as Vardaman promised -- allocated all the funds to its white land-grant college. USX-695t.

[14]State Superintendent of Education, *Twenty Years of Progress, 1910-1930 and a Biennial Survey Scholastic Years 1929-30 and 1930-31 of Public Education in Mississippi* 24 (1931).

[15]*Id.* at 203.

secondary school for 1929-30, 69.5% went to instructional services -- 60.2% for whites and 9.3% for blacks.[16]

In higher education, Alcorn, the only public college for blacks until 1940, functioned largely as an elementary and secondary school. In 1926, of Alcorn's 702 students, 88 were in college, 377 in secondary school and 237 in elementary school.[17] Funding for Alcorn was severely limited compared to the five white institutions. The state appropriated over $7,000,000 between 1920 and 1930 for buildings and permanent equipment at the six higher education institutions. Alcorn received the least of any institution -- $364,000.[18]

[16]*Id.* at 224. The Superintendent reported that, "no one who is familiar with conditions in Mississippi would contend for a moment that public education in the rural districts would be possible on any satisfactory scale without transportation," *id.* at 60, and noted that the state provided $2,166,842 for transportation in 1929-30. Yet the comparison of the total number of vehicles available for transportation in school year 1930-31 reveals a shocking 4245 for whites compared to 27 for blacks. *Id.* at 57-58.

[17]Bureau of Education, United States Department of the Interior, *Survey of Negro Colleges and Universities* 405, 416-17 (1929).

[18]*Twenty Years of Progress, supra* note 14 at 31. *See also,* Trueheart, *supra* note 10 at 265, 266. The pattern of disparity in elementary and secondary schools also continued through the 1930's, with the state reporting expenditures of $6.8 million for the instruction of white children in 1937-38, while spending $1.3 million for black children. Twenty-five

(continued...)

In May of 1940, the state assumed control of Jackson College for the purpose of training black teachers (PA 113a).[19] In 1946, the legislature established Mississippi Valley State University for the education of black teachers and for vocational training for black students. Mississippi Valley began operating in 1950. (PA 113a-114a).

Four years later, this Court struck down racial segregation in the nation's public schools. *Brown v. Board of Education*, 347 U.S. 483 (1954). That same year, defendant Board of Trustees issued a report entitled, "Higher Education in Mississippi," commonly referred to as the "Brewton Report." (PX 200 and USX 29). The report, which describes blacks as a "substandard culture group," *id.* at 127,

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[18](...continued)
Mississippi counties had no high school for blacks. State Superintendent of Public Education, *Biennial Report and Recommendations to the Legislature of Mississippi for the Scholastic Years 1937-38 and 1938-39* 15, 89-95 (1939).

[19]In his 1937 report, the Superintendent of Education reported that Jackson College had been offered to the state free of charge provided the state operate it as a teacher training institution for blacks. *Id.* When the legislature approved the operation of the school, it downgraded it from a college to the "Mississippi Negro Training School," and the school's president became a principal. 1940 Miss. Laws 352. The school's curriculum was reduced from a four-year to a two-year curriculum, but in 1944, the legislature renamed the school Jackson State College for Negro Teachers and the four-year curriculum was restored. 1944 Miss. Laws ch. 159; N. McMillen, *Dark Journey* 107-08 (1989).

concluded that the goal of educational equality for black citizens of Mississippi was "still very distant." *Id.* at 146. Linking higher education with elementary and secondary education, the Board stated:

> The quantity and quality of higher education is so inextricably bound to that on the lower level, particularly the secondary level, that it is not possible to consider inequalities in higher education at the exclusion of others. Opportunities for the Negro youth to get the basic secondary school training necessary for college admission have been considerably less than for the white youth of the State.

Id. at 146.[20]

The Board Report found that "[e]ven greater inequalities exist in the area of higher education." *Id.* at 148. The opportunities provided in the black colleges were limited to teacher education, agriculture, mechanical arts, practical arts and trades, while the five white colleges provided "a variety

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[20]The report showed that for school year 1952-53 there were 398,866 white children of school age and 496,913 black children of school age (almost 100,000 more blacks), yet there were 452 high schools for whites and only 247 for blacks (most of which were unaccredited); almost 70% of the black teachers had two years or fewer of college training compared to 7.5% of the white teachers; average salaries of white teachers with all levels of training exceeded those of blacks with corresponding training; only 20% of the total spent on transportation was used for blacks; and 72% of the expenditures for instruction went to whites -- $23,536,022 compared to $8,816, 670. (PX 200 at 139, 146-47).

of undergraduate programs" and "extensive offerings on the graduate and professional levels," *id.*; salary range for blacks was lower in all ranks than the range for whites; of the total funding for higher education for the period 1952-54, only 15.7% was allocated for blacks; and, blacks were compelled to leave the state for graduate and professional study. *Id.*

In September of 1954, Medgar Evers, a black person, applied to attend the University of Mississippi Law School. The Board rejected his application and at that time imposed a "race-neutral" alumni voucher requirement whereby each applicant for admission had to submit five letters of recommendation from alumni (USX 64 at 379-380). 1955 and 1956 passed with Mississippi's separate and unequal educational system intact.[21]

[21]During the post-*Brown* period of "massive resistance," Mississippi furiously enacted laws to negate the effect of *Brown*. *See, e.g.*, Miss. Const. art. VIII, § 213-B (1954) (permitting the legislature to abolish all public schools in the state); Act of Feb. 24, 1956, 1956 Miss. Laws 366 (repealing the compulsory education laws); Resolution of Interposition, 1956 Miss. Laws 741 (Feb. 29, 1956) (declaring *Brown* and similar decisions null and void within the territorial limits of the state of Mississippi); Act of April 5, 1956, 1956 Miss. Laws 303 (giving effect to the Resolution of Interposition and to the principle of racial segregation); Act of April 5, 1956, 1956 Miss. Laws 337 (maintained racially separate school districts); Act of April 4, 1955, 1955 Ex. Sess. 133 (prohibiting whites and blacks from attending the same state funded high schools).

In 1961, James Meredith applied for admission to the University of Mississippi. The Registrar rejected his application on February 4, 1961. (PA 120a.) Three days later the Board required all persons seeking admission to the eight institutions of higher education to take the ACT. Shortly thereafter the Board reaffirmed the alumni voucher requirement, and authorized each institution to set a minimum ACT score for admissions. (PA 120a-121a.) The Mississippi Legislature approved the establishment of ACT minimum scores with the proviso that the minimum scores "need not be uniform between the various institutions" (USX 636, p. 16). By 1963, there was "a gentleman's agreement" that the three largest HWIs would require a 15 on the ACT (Tr. 3350 (T. Meredith)). By 1966, Delta State also required a minimum score of 15 on the ACT for admission (Tr. 3507-08).[22]

[22]Thus, with the exception of the University of Mississippi and the admission of Meredith by court order, each of these institutions adopted an ACT minimum score requirement prior to admission of their first black student. *See infra* note 31. Since at least 1954 Mississippi had recognized that reliance on standardized tests scores might discriminate against blacks because of the history of inequality. The Brewton Report concluded that "*much caution should be exercised in interpreting the results of standard tests administered to Negro children.*" PX 200 at 139 (emphasis added).

Meredith successfully challenged the rejection of his application. The Court of Appeals for the Fifth Circuit found a "policy of planned discouragement and discrimination." *Meredith v. Fair*, 305 F.2d 342, 346 (5th Cir.), *cert. denied*, 371 U.S. 828 (1962). The court described the alumni voucher requirement as "[o]ne of the most obvious dodges" of the desegregation mandate. *Id.* at 352.[23]

Mississippi strenuously resisted the order to admit Meredith. Authorized by the Board of Trustees to handle the matter, Mississippi's Governor Ross Barnett, in defiance of an order of the Court of Appeals for the Fifth Circuit, invoked Mississippi's Resolution of Interposition[24] and personally blocked Meredith's registration on September 25, 1962. Lieutenant-Governor Paul Johnson, Jr., repeated this action the following day.[25] In response, President Kennedy ordered United States Marshals, subsequently supplemented

[23]The court did not consider the ACT requirement because it was not applied to Meredith as a transfer student.

[24]1956 Miss. Laws 741 (Feb. 29, 1956).

[25]*United States v. Barnett*, 330 F.2d 369 (5th Cir. 1963) (*en banc*); *United States v. Barnett*, 376 U.S. 681, 686 (1964). Both were held in contempt of court. *Id.*

with federalized Mississippi National Guardsmen and regular army troops[26] to enforce the court's order.[27] Ultimately, Meredith registered at the University on October 1, 1962, accompanied by United States Marshals. There he studied "under continuous guard until his graduation."[28]

II. *The Separate and Unequal System of Higher Education Remains Substantially Intact: 1962-1987*

In the *post-Meredith* period, black Mississippians faced continued opposition to efforts to avail themselves of educational opportunities available at Mississippi's white institutions. On June 4, 1963, Cleve McDowell was forced to obtain a federal court order to gain admission to the University of Mississippi Law School.[29] Again, in 1964, black student Cleveland Donald had to obtain a court order

[26]*United States v. Barnett*, 330 F.2d at 380; *United States v. Barnett*, 376 U.S. at 686. *See also* C. Vann Woodward, *The Strange Career of Jim Crow* 174-75 (3rd revised ed. 1974).

[27]The federal forces faced armed opposition and a night-long battle ensued in which Marshals tried to control the crowd with tear gas; two people were killed, 375 injured (166 of them Marshals, 29 by gunshot wounds). *United States v. Barnett*, 376 U.S. at 686; *Woodward*, *supra* note 26, at 175. *See also* T. Branch, *Parting the Waters, America In the King Years 1954-63* 647-53, 656-72 (1988).

[28]*United States v. Barnett*, 376 U.S. at 686.

[29]*McDowell v. Tubb*, No. 3425 (S.D. Miss. June 4, 1963); USX 636, p. 21.

allowing his admission to the University of Mississippi.[30] In March of 1966, the Mississippi College For Women refused to consider applications of six black women. The women were forced to file a complaint with the Mississippi Council on Human Relations (USX 913, S. 773).[31]

The decade of the 1960's brought little in the way of change in the elementary and secondary schools, whose students, faculty and staff remained rigidly segregated until at least the 1970-71 school year.[32] With the first real movement toward desegregated schools in 1970 came the rapid creation and enlargement of racially segregated private academies,

[30]*Donald v. Tubb*, No. 3583 (S . Miss, June 10, 1964); USX 636, p. 21.

[31]Mississippi's HWIs enrolled their first black students in the following years: University of Mississippi (1962), Mississippi State University (1965), Mississippi University for Women (1966), Delta State University (1966), University of Southern Mississippi (1967) (PA 116a). The HBIs enrolled their first white students in the following years: Alcorn State University (1966), Jackson State University (1969), Mississippi Valley State University (1970) (PA 117a).

[32]*See United States v. Hinds County School Bd.*, 417 F.2d 852 (5th Cir. 1969) (per curiam), *cert. denied*, 396 U.S. 1032 (1970), *delaying order rev'd sub nom. Alexander v. Holmes County Bd. of Educ.*, 396 U.S. 19 (1969).

which Mississippi supported through tuition grants, tuition loans, and free textbooks.[33]

In the winter of 1969-70, the Office for Civil Rights ("OCR") of the Department of Health, Education and Welfare notified Mississippi that it was operating a segregated system of higher education in violation of Title VI of the Civil Rights Act of 1964, and asked that the state submit a desegregation plan within 120 days. Mississippi did not respond.[34]

In 1973, OCR again advised the state that its higher education system was in violation of Title VI and asked the state to submit a desegregation plan (USX 407, p.1). OCR's November 10, 1973 letter to the state in response to the first plan submitted sets out the findings of OCR's investigation of the state system. These findings were not disputed at trial.

[33]Each such strategy to provide public support for a private segregated system had to be challenged by black citizens. *Norwood v. Harrison*, 413 U.S. 455 (1973) (Burger, J.)(textbooks); *Coffey v. State Educ. Finance Comm.*, 296 F. Supp. 1389 (S.D. Miss. 1969)(tuition grants) (unpublished order in same case entered Sept. 2, 1970 prohibiting tuition loans).

[34]*Adams v. Richardson*, 356 F. Supp. 92, 94 (D.D.C.), *aff'd*, 480 F.2d 1159 (D.C. Cir. 1973) (*en banc*).

OCR concluded that the state's actions since the early 1970's served to reinforce and perpetuate the dual system. In comparing the two land-grant colleges, OCR found:

> Since 1971 Alcorn has constructed or begun to construct faculty housing, an agricultural building, a student union expansion, and student dormitories; M.S.U. has constructed or begun to construct a library annex, a forest products utilization laboratory, a veterinary science building, an entomology complex, a dairy sciences building, and a seed technology building.

Id. at 5. OCR concluded that the construction since 1971 "reinforced the different agricultural capabilities of the two institutions and generally has increased the disparity between their physical plants." *Id.*

Alcorn also suffered in comparison to the University of Southern Mississippi, the only other four-year institution in the southern portion of the state. OCR found that,

> [s]ince 1970 U.S.M. has initiated or reorganized 21 academic programs, begun a three-year Bachelor Degree program, and upgraded two resident centers to degree-granting branches, one of which is close to Alcorn in the southwestern corner of the State. In the same period Alcorn has approved nine new majors. *Thus U.S.M. currently grants 15 Bachelor Degrees in 8 divisions, covering 105 majors; Alcorn grants 2 Bachelor Degrees covering 30 majors.*

Id. at 5 (emphasis added). In addition to increasing disparities between the HBIs and the HWIs, OCR also found that the HWIs were adding programs designed to duplicate those offered by HBIs. While Jackson State had expanded its offerings in the education field, the University of Mississippi

> just created 6 new departments out of its former School of Education. This duplication of most of Jackson's programs in education appears to represent a substantial disincentive for white students to attend Jackson, although Jackson's growth in this area could have attracted such students.

Id. at 6.

OCR also concluded that the faculties and student bodies remained rigidly segregated. *Id.* at 2-4. Finally, OCR found Mississippi's then proposed plan of compliance inadequate, noting that it "states policies of prospective nondiscrimination . . . without detailing actions which will eliminate the effects of past racial segregation." *Id.* at 7.[35]

After OCR rejected Mississippi's revised Plan of Compliance in 1974, Mississippi nonetheless announced its

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[35]During this period, the Mississippi Cooperative Extension Service, a division of Mississippi State University was discriminating against blacks in employment and promotion activities. *Wade v. Mississippi Coop. Extension Serv.*, 372 F. Supp. 126 (N.D. Miss. 1974), *aff'd in relevant part*, 528 F.2d 508, 518, 519 (5th Cir. 1976).

intent to implement the plan. One glaring omission in the plan was the failure to address admissions standards at HWIs. (USX 1; BDX 20). Thereafter, in January of 1975, black citizens of Mississippi filed this action, and on April 21, 1975, the United States intervened; both complaints identified the admission standards as discriminatory.

In 1975-76, the Board began to reexamine its admissions standards, Tr. 3550 (T. Meredith), and in the process was provided with numerous objections to the use of a minimum ACT score as the sole criterion for admission,[36] including the fact that a survey of 15 major universities in 13 Southern and

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[36]Board documents reveal the following possible objections (USX 56):

1. High school grades have provided the best single predictor of college success. However, it is the consensus of opinion that aptitude test scores along with high school grades will give a better projection of college success in the first year of performance. [See PPA 110 (ACT confirming that grades and ACT scores combined are a better predictor of success in college than ACT scores alone)]

2. Standardized tests are generally considered to have a degree of cultural-ethnic bias.

3. The historically black institutions are committed to upgrade those citizens with the greatest educational deficiencies.

4. Allocation of resources is related to enrollment and production of student credit hours.

5. Substantial federal grants are available for special service programs (remedial) at institutions of higher learning.

border states revealed that none relied on test scores alone for admissions decisions and that 13 used high school grades in the admissions process (USX 56).[37]

On May 20, 1976, the Board adopted admissions policies requiring, for the 1977-78 school year, that the eight universities limit enrollment of entering freshman to those scoring nine or above on the ACT. The policy required that,

> [t]hose institutions which presently have an entrance standard requiring a higher [than 9] ACT score must *maintain* that minimum admission score.

(USX 48) (emphasis added). Thus, the institutions primarily affected by the 1976 policy were the HBIs, which previously had no minimum ACT score requirements.[38]

On February 17 and December 15, 1977, the Board amended the exceptional admission policy, limiting the number of students who could be admitted with ACT scores

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[37]At this time the four HWIs utilizing a 15 cut-score on the ACT had probationary admissions policies for students with ACT scores below 15. None of these institutions had numerical restrictions on the number of students that could be admitted on probationary status (USX 39 pp.4-5).

[38]The HWIs previously had admitted relatively small numbers of students in the 9-14 ACT score interval (BDX 176, 177). For example, while 25,818 students attended HWIs in 1972 (USX 407, p.3), the five HWIs admitted only 485 students (1.8%) with scores below 15 for the following academic year (BDX 176).

between 9 and 14 (USX 48). Although each of the HBIs already maintained lower minimum score requirements for regular admission, the Board assigned each of them much more expansive exceptional admissions roles, while none of the HWIs was authorized to allow substantial numbers of exceptional admissions.[39]

In 1981, the Board adopted new mission designations for the eight universities (PX 316), dividing them into comprehensive, urban and regional categories.[40] *Id.*

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[39]The HWIs may only enroll students with ACT scores below 15 through the exceptional admissions program; the total number admitted may not exceed 5% of the previous years freshman enrollment or 50 students whichever is greater (PA 127a). The number of students admitted under this program is further restricted by the fact that schools are not required to use their exceptional enrollment slots (Mississippi University for Women did not use any for the period 1982-83 to 1986-87) (BDX 173, p.6); HWIs often publicize the 15 requirement but not the exception (PA 52a., n.12. USX 967, pp. 82-84, BDX 141, BDX 161), and at least one HWI does not encourage those with scores below 15 to apply (Tr. 3467). The cumulative result of these restrictive admissions policies is that few exceptional admissions are granted. For example, in the fall term of 1984, only 250 of the 3,545 (7%) freshman admitted to HWIs came in under the policy, and only 101 of those 3,545 (2.8%) were black. (PX 277, Tr. 4361) (offer of proof).

[40]The Board assigned three historically white institutions (University of Mississippi, University of Southern Mississippi, and Mississippi State University), the broadest mission as "comprehensive universities" with substantive leadership roles in designated areas. Jackson State University was designated as an "urban university," and two HBIs (Alcorn and Mississippi Valley), along with the two smallest HWIs (Delta State and Mississippi University for Women), were designated "regional universities." PX 316.

Defendants admitted (Tr. 3656 (T. Meredith)), and the *en banc* majority found that mission designations locked in the existing disparities and inequities among the various institutions:

> [T]he disparities are very much reminiscent of the prior system. The inequalities among the institutions largely follow the mission designation, and the mission designations to some degree follow the historical racial assignments.

(PA 37a).[41]

These disparities and continued segregation are well-documented in the panel opinion.[42]

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[41]Board witness, Dr. Thomas Meredith, testified that the mission designations precluded Jackson State from developing additional doctoral programs, but allowed it to continue with its one doctoral program in education. "I don't believe it encouraged Jackson State for further development in the doctorial (*sic*) arena. We already had three institutions doing that." Tr. 3649, T. Meredith. The mission designations also precluded Alcorn and Mississippi Valley from going beyond the master's degree level and limited the number of masters degree programs available to them. Delta State already offered degrees at the specialist and doctorate level, and Mississippi University for Women offered programs at the specialist level. Tr. 3654-55, T. Meredith.

[42]For example, salaries are higher at the HWIs than at the HBIs with Jackson State's salaries -- the urban university -- in line with those of the two historically white "regional" universities; the two historically black regional universities have the lowest salaries in the state; program offerings are much broader at the three largest HWIs and the two regional HBIs have the most limited programs in the state; the comprehensive universities receive the most funds per student credit hour, the regionals the least, and Jackson State is in the middle; the average total education and general expenditures per student in 1986 at HWIs was $8,516 compared to $6,038 at HBIs; the replacement value of the facilities at the

(continued...)

The combination of the 15 ACT minimum score requirements and the narrow exceptional admissions provisions at the HWIs, work together with the mission designations to lock in past disparities. Today, Mississippi sends 86% of its white students to the three overwhelmingly white "comprehensive" universities that on every substantive measure are much better supported than the HBIs which 71%

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[42](...continued)
two historically black "regional" institutions are the lowest in the state, with Jackson State slightly above the two historically white "regional" institutions but far below the lowest "comprehensive" institution (almost half the value); faculty, staff and students remain segregated by race (PA 50a-51, 55a-68a). As of trial, of the 13 members of the Board of Trustees, three were black (PA 166a-167a). With respect to the regional universities in particular, Delta State fares better than Alcorn or Mississippi Valley on almost any measure, and is fairly comparable to Jackson State on most measures. *See* PA 56a, 59a-61a, 68a. The Mississippi University for Women, is not a good model for comparison because of its small size and primary mission to serve a population that historically also has been accorded second-class treatment in education. *See Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 727 n.13 (1982).

Problems of continuing segregation at the elementary and secondary level also persisted during the period. For example, the Natchez, Mississippi school system was desegregated for the first time in the 1989-90 school year. *United States v. Natchez Special Mun. Separate School Dist.*, No. 1120(W) (S.D. Miss. July 24, 1989)(unpublished). *See also United States v. Pittman*, 808 F.2d 385, 386 (5th Cir. 1987) (over 70% of Hattiesburg's elementary schools remained segregated); *United States v. Lawrence County School Dist.*, 799 F.2d 1031, 1040 (5th Cir. 1986) (over 50% of the elementary students were attending racially identifiable schools); *United States v. Mississippi*, 567 F.2d 1276, 1277 (5th Cir. 1978) (*per curiam*) (five out of seven elementary schools were virtually one race schools); *United States v. Columbus Mun. Separate School Dist.*, 558 F.2d 228, 229 (5th Cir. 1977), *cert. denied*, 434 U.S. 1013 (1978) (half of the elementary schools were racially identifiable).

of its black students attend.[43] Thus, profound racial disparity and segregation continue to be the hallmarks of Mississippi's higher education system.

SUMMARY OF THE ARGUMENT

Mississippi's higher education system violates 34 C.F.R. § 100.3(b)(6)(i), which requires that states which operated de jure segregated educational systems take "affirmative action to overcome the effects of past discrimination." The regulation has the force of law and clearly requires more than the adoption of good-faith, race-neutral policies. This is evident from 1) the plain language of the regulation, 2) the fact that it was adopted in 1973, after it was already clear that Title VI and the existing regulations required race-neutral policies, 3) an illustrative application in 34 C.F.R. § 100.5(h) indicating that "additional steps" beyond race neutrality are required, and 4) the HEW interpretive guidelines which enumerate a variety of affirmative remedial steps.

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[43]PPA 137; USX 880. Ninety-nine percent of Mississippi's white students attend HWIs. *Id.*

Bazemore v. Friday, 478 U.S. 385 (1986) does not compel the opposite result, for *Bazemore* presented a radically different factual setting. Moreover, unlike *Bazemore*, where the Court placed heavy emphasis on the federal government's position that North Carolina had complied with the applicable Department of Agriculture regulations, in *Ayers* the government has never maintained that Mississippi has complied with § 100.3(b)(6)(i).

Mississippi is also in violation of the equal protection clause, which imposes upon the state an affirmative duty to eliminate "root and branch" the vestiges of its dual system. This obligation to take measures to undo past discrimination has always been a central tenet of school desegregation jurisprudence. It is logical and necessary that the affirmative duty be applied to higher education because, as the Court concluded in *Green v. New Kent County*, 391 U.S. 430 (1968), to do otherwise would leave in place the very discrimination condemned in *Brown*. Mississippi has not satisfied its affirmative duty because it continues to operate under a dual structure shaped by intentional discrimination. *Hunter v. Underwood*, 471 U.S. 222 (1985). In addition to

failing to eliminate continuing intentional discrimination, the state has failed to eliminate the vestiges of the dual system which present a continuing barrier to equal educational opportunity. The finding of the *en banc* majority that further dismantling of the racially dual structure would eliminate diversity among institutions and student choice was in error. The diversity and choice present in the Mississippi system today are legacies of the previous regime of de jure segregation and cannot be protected. As a remedy hearing would demonstrate, true diversity and choice, free of discriminatory stigma, are fully compatible with *Brown's* mandate of educational equality.

ARGUMENT

I. *Mississippi's Duty Under 34 C.F.R. § 100.3(b)(6)(i) To "Take Affirmative Action To Overcome The Effects Of Prior Discrimination" Is Not Satisfied By Abandoning Expressly Discriminatory Policies Where Mississippi's Prior Discrimination Continues to Have Effect.*

A. *Petitioners' Regulatory Claim Is Properly Considered Prior to the Constitutional Claim.*

This Court has maintained consistently that where constitutional and nonconstitutional claims are presented, it will first address the nonconstitutional claim where to do so

might obviate the need to consider the constitutional issue. *See Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J. concurring).[44] Ayers' Petitioners have pressed their claim under 34 C.F.R. § 100.3(b)(6)(i) at each stage of this litigation,[45] however, the lower courts have failed to address it adequately.[46]

B. *34 C.F.R. § 100.3(b)(6)(i) Has The Force Of Law.*

Mississippi's system of higher education is in violation of 34 C.F.R. § 100.3(b)(6)(i), which provides:

> In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

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[44] *Accord United States v. Wells Fargo Bank*, 485 U.S. 351, 354 (1988); *Mobile v. Bolden*, 446 U.S. 55, 60 (1980); *New York City Transit Auth. v. Beazer*, 440 U.S. 568, 582 (1979).

[45] *See e.g.*, District Court: Private Plaintiffs' Findings of Fact and Conclusions of Law at C-1. Court of Appeals: Brief for Plaintiffs-Appellants at 56 & n.106, 64 & n.123, 66-67 & n.126. U.S. Supreme Court: Ayers Petitioners' Petition for Writ of Certiorari at i, and 41-43.

[46] The district court referred generally to the Title VI regulations but did not apply § 100.3(b)(6)(i) (PA 168a, 182a-184a). The *en banc* majority addressed the regulatory claim in a cursory manner (PA 26a, n.11). The district court apparently applied § 100.3(b)(2) with respect to the ACT minimum score requirement (PA 182a), but did so improperly because it held that the ACT cut-score was valid even if there were less exclusive alternatives that were educationally sound (PA 182a). *Compare Albermarle v. Moody*, 422 U.S. 405, 425 (1975).

(PPA 89).[47] The regulation was promulgated pursuant to § 602 of Title VI which provides, in relevant part:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract . . . is *authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability.*

42 U.S.C. § 2000d-1 (emphasis added).[48]

This Court has held that where Congress expressly delegates to an agency the power to implement a statute, as it did in § 602, Congress entrusts to the agency rather than the courts primary responsibility for interpreting the statute. Moreover, substantive rules adopted pursuant to that delegation have the force of law. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 301-03 (1979); *Batterton v. Francis*, 432 U.S. 416, 425 (1977).

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[47] The regulation is both valid and applicable to Mississippi. The district court found that Mississippi has a lengthy history of discrimination in its higher education system (PA 114a-117a), and that its higher education system receives federal funding (PA 169a, n.7).

[48] Section 602 requires that such regulations be signed by the President. *Id.* President Nixon approved the adoption of § 100.3(b)(6)(i) by 21 Federal agencies in 1973. 38 Fed. Reg. 17920 (July 5, 1973).

C. *Where Continuing Discriminatory Effects of the De Jure System Exist, 34 C.F.R. § 100.3(b)(6)(i) Mandates Implementation of Affirmative Measures To Overcome Those Effects.*

In its brief reference to the Title VI regulation, the *en banc* majority ruled that the affirmative duty under § 100.3(b)(6)(i) is satisfied by "discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures" (PA 26a). Petitioners submit that this holding is in error.

The regulation requires more than simply the adoption of race-neutral policies. It requires the adoption of affirmative measures to eliminate the vestiges of Mississippi's dual higher education system. This conclusion is compelled by the plain language of the regulation, its history, an illustrative example in the regulations, and the HEW guidelines promulgated to interpret the regulation.

1. The Plain Language of § 100.3(b)(6)(i)

A common sense reading of the regulation's language, which requires "affirmative action to overcome the effects of prior discrimination," leads to a conclusion that more is required than simply the adoption of policies of

nondiscrimination. If the affirmative action requirement could be satisfied by adopting race-neutral policies, the drafters would have indicated such, by directing recipients to take, for example, "affirmative action to end previous discriminatory practices." That explicit and stronger language was used is an indication that strong steps are required.

2. The History of § 100.3(b)(6)(i)

The original Title VI regulations adopted in 1964 did not include § 100.3(b)(6)(i). That section was added in 1973. 38 Fed. Reg. 17,979 (July 5, 1973). At that time, a nondiscrimination edict already existed in both Title VI, 42 U.S.C. § 2000d, and the existing regulations, 29 Fed. Reg. 16,299 (Dec. 4, 1964). Thus, the purpose of the amendment to the regulation could only have been to make clear that in certain circumstances more than nondiscrimination was required. To view the 1973 addition of an "affirmative action" provision as requiring nothing more than race-neutral policies suggests that Title VI and the original regulations did not *themselves* mandate nondiscrimination policies. That position is not tenable.

3. The Illustrative Example

When § 100.3(b)(6)(i) was added to the HEW's Title VI regulations in 1973, the agency also added an "Illustrative application," which provides, in relevant part:

> In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient . . . have failed to overcome these consequences, it will become necessary under the requirement stated in [§ 100.3(b)(6)(i)] for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination.

34 C.F.R. § 100.5(h). The "additional steps" must refer to something more than race-neutral policies, for the steps become necessary only when those policies alone have failed to produce equal educational opportunity.

4. HEW Criteria Interpreting § 100.3(b)(6)(i)

In 1978, the Department of Health, Education and Welfare (HEW) published its "Revised Criteria Specifying the Ingredients of Acceptable Affirmative Action Plans to Desegregate State Systems of Higher Education." 43 Fed. Reg. 6658 (Feb. 15, 1978). While these guidelines do not have the force of law, they "do constitute a body of

experience and informed judgment to which courts and litigants may properly resort for guidance." *Skidmore v. Swift*, 323 U.S. 134, 140 (1944); *see Lau v. Nichols*, 414 U.S. 563, 568 (1974) (court deferred to HEW memorandum requiring schools to take affirmative steps to address needs of bilingual children).[49]

The guidelines first affirm the conclusion that states with a history of de jure segregation, "are required to take affirmative remedial steps and to achieve results in overcoming the effects of prior discrimination." 43 Fed. Reg. at 6659. The guidelines specify the nature of the affirmative remedial obligation in a wide variety of areas. Each element of the guidelines shares one feature: states are required to do more than adopt race-neutral policies.[50]

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[49] *See also Local 93, Int'l Ass'n of Firefighters v. Cleveland*, 478 U.S. 501, 517-18 (1986); *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 65 (1986).

[50] For example, they specify that an acceptable desegregation plan shall eliminate program duplication among HWIs and HBIs, adopt specific goals and timetables to increase the number of blacks who enter and graduate from HWIs and whites who enter and graduate from HBIs, 43 Fed. Reg. at 6662, and adopt specific goals and timetables to increase the number of blacks on university governing boards, and on the faculty and staffs of HWIs. *Id.* at 6661-62.

In summary, all of the available indicators -- the regulation's plain language, its history, the illustrative example, and the HEW criteria -- compel the conclusion that 34 C.F.R. § 100.3(b)(6)(i) mandates that fund recipients with a history of discrimination must do more than adopt race-neutral policies when faced with the continuing effects of past discrimination.

D. *The En Banc Majority Erred In Concluding that Bazemore v. Friday Precludes Liability Under 34 C.F.R. § 100.3(b)(6)(i).*

The *en banc* majority's cursory dismissal of petitioners' regulatory claim (PA 26a & n.11; *see also* PA 37a), relied on this Court's decision in *Bazemore v. Friday*, 478 U.S. 385 (1986). That case involved the application of an identical Department of Agriculture regulation to 4-H Clubs and Homemaker Clubs. However, the facts of *Bazemore* are so distinct from the facts here (the sole common element being the absence of mandatory assignments by the state to either clubs or colleges), that application of § 100.3(b)(6)(i) to this case necessarily differs substantially.

Access. In *Bazemore* there were no barriers to access to any clubs. Here, 70% of black students are automatically denied access to the five HWIs by virtue of the ACT minimum score requirement.[51]

Current segregation. There was only limited evidence of continuing segregation in *Bazemore*, in contrast to the substantial showing in this case. In *Bazemore* the racially separate administrative structures servicing racially separate clubs were merged into a single organization in 1965;[52] all 4-H and Homemaker activities above the community level were fully integrated, including the 4-H camps;[53] there was no finding by any court on the actual extent of racial segregation;[54] only 15.7% of all participants in 4-H clubs belonged to one-race clubs;[55] and there was no information in the record about the racial composition of Extension

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[51]PA 51a-54a & n.13.

[52]*Bazemore v. Friday*, 751 F.2d 662, 666 (4th Cir. 1984).

[53]*Bazemore* Resp. Br. at 48.

[54]*Bazemore* Fed. Br. at 37, n.39; *see Bazemore*, 478 U.S. at 410-11 (Brennan, J., dissenting).

[55]*Bazemore* Fed. Br. at 37, n.39.

Homemaker Clubs after 1972, some ten years before trial in the case.[56] Here, on the other hand, the evidence is uncontested that 99% of white students attend HWIs and 71% of black students attend HBIs, each of which has a black population of at least 92%;[57] the administration of all HWIs is overwhelmingly white and that of HBIs black;[58] and black students are disproportionately denied access to HWIs due to ACT minimum score requirements.[59]

Other discrimination. In *Bazemore* there was no evidence of discrimination in the provision of any services or materials;[60] there was no evidence that any person had been discriminated against, nor was there evidence that any individual had been denied membership in any club.[61] In *Ayers*, individual faculty and students testified about the

[56]*Bazemore*, 478 U.S. at 410-11 (Brennan, J., dissenting).

[57]PA 50a, PPA 137.

[58]PA 58a, n.22.

[59]PA 51a-54a.

[60]*Bazemore*, 751 F.2d at 687 n.128.

[61]*Bazemore*, 478 U.S. at 407.

discriminatory treatment that they personally suffered;[62] facilities, funding, and programs provided for the majority of black students are inferior to those provided the majority of white students;[63] and the state continues to use an ACT admissions requirement adopted with discriminatory intent.[64]

Participation rates. There was no evidence in *Bazemore* that blacks participated in the 4-H and Homemaker clubs in lower proportions than did whites. Indeed, membership in North Carolina 4-H clubs during the ten years prior to trial in *Bazemore* was 32% black, while North Carolina's population was only 22% black.[65] Here, in contrast, the participation and graduation rates of blacks are significantly lower than the participation and graduation rates of whites, particularly at the graduate and professional levels.[66]

[62]Tr. 2659-2692, 2709-2774, 2777-2803 (students); 2072-2097, 1739-1759 (faculty).

[63]PA 59a-68a.

[64]PA 51a-54a.

[65]*Bazemore* PA 181a-182a.

[66]USX 172-204, 880; PX 329(3); PPA 114, 116, 151.

Remedial Measures. The concern in *Bazemore* that the only action North Carolina could take to promote integration of the clubs would be to make mandatory, race-based assignments, is not present here.[67] At no stage of this litigation have petitioners suggested that students be mandatorily assigned to institutions of higher learning based on race. Moreover, Mississippi's complex institutional structure provides many opportunities for the state to take steps to overcome the effects of past segregation.[68] As the HEW Criteria make clear, Mississippi can eliminate unnecessary program duplication, provide supportive services so that more black students graduate from its colleges and professional schools, increase the numbers of blacks who serve on the Board of Trustees and who teach at HWIs, and

[67] *See Bazemore* Fed. Reply Br. at 18, n.18.

[68] While North Carolina had an attenuated relationship to the clubs in *Bazemore*, Mississippi has a powerful and direct relationship to the institutions of higher education in this case. The Homemaker and 4-H clubs were voluntary groups formed in communities by adult volunteers who received only advice and support from the North Carolina Extension Service; moreover, their activities did not take place in public facilities. *Bazemore* PA 19a (district court decision). Here, on the other hand, there is an entire structure of governing boards, administrators, faculty and staff hired by the state, all of whom administer a state-sponsored, state-funded, state-controlled system of public education. PA 59a-68a.

increase white enrollment at HBIs by ending these schools' inferior status. 43 Fed. Reg. 6658-6649.

Importance of Higher Education: The Court in *Bazemore* relied upon the "wholly different milieu" of 4-H clubs and Homemaker Clubs in contrast to elementary and secondary schools involved in *Green* in making its determination of no liability. 478 U.S. at 408. Higher education is, of course, radically different from 4-H clubs and Homemaker Clubs in its structure (as illustrated above) and in its goals. As the three-judge district court stated in *United States v. Louisiana*, 692 F. Supp. 642 (E.D. La. 1988),[69] the value of the experience provided in 4-H and Homemaker clubs "cannot compare to the national need for educated citizens." *Id.* at 656.

In all of these respects, *Bazemore* and *Ayers* could not be more distinct. Moreover, in *Bazemore* the Court relied heavily on the fact that the United States took the position that North Carolina was in full compliance with the applicable Department of Agriculture regulation. The Court

[69] [*vacated*, 751 F. Supp. 606 (E.D. La. 1990) (pursuant to *en banc* decision in *Ayers*.)]

ruled that "[i]n view of the deference due the Department's interpretation of its own regulation, we cannot accept petitioner's submission that the regulation has been violated." 478 U.S. at 409.[70] Here, the United States has never taken the position that Mississippi is in compliance with the Title VI regulations. Thus, the absence of agency support for the State's position, as in *Bazemore*, as well as the strikingly different fact pattern, compel the opposite result in this case.

Given the continued existence of a sophisticated and extensive dual system that limits educational opportunities for black students, and the state's failure to undertake sufficient measures to remedy these continuing discriminatory effects, *see supra* pp. 55-56, there is a current violation of § 100.3(b)(6)(i) which requires a remand for development and implementation of a remedy.

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[70]Unlike the Title VI regulations at issue here, the Department of Agriculture regulations that applied in *Bazemore* did not include a provision parallel to the "illustrative application" contained in 34 C.F.R. § 100.5(h), which together with § 100.3(b)(6)(i) makes explicitly and undeniably clear that affirmative steps beyond the mere adoption of nondiscriminatory policies are required.

II. *The Fourteenth Amendment Imposes Upon Mississippi An Affirmative Duty to Eliminate the Vestiges of Its Racially Dual Higher Education System "Root and Branch."*

The *en banc* court purported to apply established Fourteenth Amendment jurisprudence requiring affirmative steps to eliminate the vestiges of state-created racially dual structures:

> We therefore hold that to fulfill its affirmative duty to disestablish its prior system of de jure segregation in higher education, the state of Mississippi satisfies its constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures.

(PA 26a). This formulation of the state's duty, however, eviscerates the standard which it claims to apply. It fails to require the eradication of the very conditions created by the dual system that continue to disadvantage the African American population whose subordination was the target of Mississippi's dual system. And it is wholly unnecessary to adopt such a standard in order to give appropriate recognition, in the remedial process, to the values of institutional diversity and student choice.

A. *A Fundamental Tenet of the Court's Equal Protection Jurisprudence Is the Affirmative Duty to Eliminate the Vestiges of a Discriminatory System.*

In *Brown v. Board of Education*, 349 U.S. 294, 301 (1955)(*Brown II*), the Court required states and districts that had operated racially dual school systems "to effectuate a transition to a racially nondiscriminatory system," while recognizing that the task "may call for elimination of a variety of obstacles," *id.* at 300, and would necessarily involve resolution of "varied local school problems." *Id.* at 299. Applying *Brown II* in *Green v. County School Board of New Kent County*, 391 U.S. 420 (1968), the Court made it clear that state authorities were required to act affirmatively to effectuate this goal, rather than merely to cease assignment of students by race:

> *In the context of the state-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former 'white' school to Negro children and of the 'Negro' school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system. . . .* [In *Brown II*, school boards that had operated dual systems were] clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.

Id. at 437-38 (emphasis added and citation omitted).

The affirmative duty principle has repeatedly been emphasized, in school desegregation cases. Thus, in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971), after summarizing the course of experience from *Brown* to *Green*, the Court reaffirmed that "[t]he objective today remains to eliminate from the public school *all vestiges* of state-imposed segregation" (emphasis added). *Accord, e.g., Bd. of Educ. of Oklahoma City v. Dowell*, 111 S. Ct. 630, 638 (1991); *Keyes v. School Dist. No. 1, Denver*, 413 U.S. 189, 200 (1973).[71]

The Court also has applied the afirmative duty to eliminate the vestiges of past discrimination in other racial discrimination cases. *See, e.g., Louisiana v. United States*, 380 U.S. 145, 154 (1965) (remedy suspending new "race-neutral" voting test sustained where prior discrimination had drastically reduced potential black voters; the court "has not

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[71] *See also Milliken v. Bradley*, 433 U.S. 267 (1977) (approving supplemental remedies designed to increase educational achievement and holding that decrees in school desegregation cases "must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct'"). *Id.* at 280 (citations ommitted).

merely the power but the duty to render a decree which will so far as possible *eliminate the discriminatory effects of the past* as well as bar like discrimination in the future") (emphasis added);[72] *Gaston County v. United States*, 395 U.S. 285, 297 (1969)("'Impartial' administration of the literacy test today would serve only to perpetuate these inequities in a different form"); *Carter v. Jury Comm. of Greene County*, 396 U.S. 320, 339-40 & n.46 (1970)(further discriminatory selection of individuals for jury rolls enjoined *and* immediate emptying of current jury box ordered to remedy *past* discrimination).

The affirmative duty to eliminate vestiges in racial discrimination cases parallels the scope of equitable relief administered by federal courts in other areas.[73] In *Standard Oil Co. v. United States*, 221 U.S. 1 (1911), for example, the

[72]*See also Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 232-34 (1964) (in addition to enjoining the closing of public schools to avoid desegregation, district court could require Board to levy taxes to support public educational system, and the trial court should "enter a decree which will guarantee that these petitioners will get the kind of education that is given in the State's public schools").

[73]Of course, "[a] school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right," *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. at 15-16.

Court articulated the need for remedies of adequate breadth as follows:

> Remedies two-fold in character become[ ] essential: 1st. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2d. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

Id. at 77-78. The principle there declared has been consistently applied in antitrust suits.[74]

In summary, the affirmative duty principle is firmly rooted in the Court's jurisprudence regarding equitable remedies.

[74]*See, e.g., Ford Motor Co. v. United States*, 405 U.S. 562, 573 n.8 (1972)("relief must be directed to that which is 'necessary and appropriate in the public interest to *eliminate the effects* of the acquisition offensive to the statute,'" *quoting United States v. DuPont de Nemours & Co.*, 353 U.S. 586, 607-08 (1957)[emphasis in original]); *United States v. United States Gypsum Co.*, 340 U.S. 76, 88 (1950)(trial court which has found monopoly to exist "has the duty to compel action by the conspirators that will, so far as practicable, *cure the ill effects* of the illegal conduct, and assure the public freedom from its continuance") *United States v. Crescent Amusement Co.*, 323 U.S. 173 (1944) (emphasis added).

B. *The Affirmative Duty To Eliminate The Vestiges Of A Formerly De Jure System Is Appropiately and Necessarily Applied In the Higher Education Context If the Harm to Petitioners Is to Cease.*

It is wholly logical, necessary, and consistent with the Court's Equal Protection jurisprudence that Mississippi be requried to eliminate the vestiges of its dual system. The importance of higher education to individuals, the state and the nation cannot be gainsaid, and application of a lesser duty here would perpetuate educational disparities among the citizens of Mississippi that are directly traceable to the state's racial discrimination.

Prior to the decisions of the district court and *en banc* majority here, every court that had considered the issue, with the exception of one, had concluded that the affirmative duty applies with equal force in the higher education context. Courts considering desegregation of the Tennessee higher education system repeatedly reached this conclusion. *Geier v. Alexander*, 801 F.2d 799, 804-05 (6th Cir. 1986).[75]

[75]See also *Geier v. Univ. of Tenn.*, 597 F.2d 1056, 1065-67 (6th Cir.), *cert. denied*, 444 U.S. 886 (1979); *Geier v. Dunn*, 337 F. Supp. 573, (continued...)

Three-judge district courts in Virginia and Louisiana ruled similarly in *Norris v. State Council of Higher Educ. for Virginia*, 327 F. Supp. 1368 (E.D. Va.), *aff'd mem.*, 404 U.S. 907 (1971),[76] and *United States v. Louisiana*, 692 F. Supp. 642, 653-58 (E.D. La. 1988), *vacated*, 751 F. Supp. 606 (E.D. La. 1990) (pursuant to *Ayers*).[77]

[75](...continued)
576-81 (M.D. Tenn. 1972); and *Sanders v. Ellington*, 288 F. Supp. 937, 942-43 (M.D. Tenn. 1968).

[76]*See also Ayers*, 914 F.2d at 692 (Goldberg, J. dissenting); *id.* at 693 (Higginbotham, J., concurring in part and dissenting in part); *United States v. Alabama*, 628 F. Supp. 1137, 1171-72 (N.D. Ala. 1985), *rev'd on other grounds*, 828 F.2d 1532 (11th Cir.) (applying affirmative duty), *cert. denied*, 487 U.S. 1210 (1987); *Lee v. Macon County Bd. of Educ.*, 267 F. Supp. 458, 474 (M.D. Ala.) (per curiam) (state colleges have an "affirmative duty to effectuate the principles of *Brown*"), *aff'd sub. nom. Wallace v. United States*, 389 U.S. 215 (1967).

[77]The sole exception prior to the decisions below is *Alabama State Teachers Ass'n v. Alabama Pub. School and College Auth. (ASTA)*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969). In *ASTA* however, the question presented did not involve the dismantling of a formerly *de jure* state-wide system of higher education. The court there dealt only with the question whether to enjoin the construction of a new institution. The court refused to grant the injunction emphasizing, *inter alia*, that "much of the plaintiffs' argument is based on speculation." *Id.* at 789. The court concluded that on the record before it, creation of the new school was at least arguably as consistent with the asserted "duty to maximize desegregation" as the plaintiffs' proffered resolution. In that context, the *ASTA* court refused to enjoin the construction. We do not, therefore, read *ASTA's* language regarding the scope of the affirmative duty in higher education as announcing a principle of general applicability different from that which has been recognized by all other courts except in the instant case.

Significantly, the decisions of this Court relied upon in *Brown I* were challenges to segregation in the higher education arena.[78] The Court's statement in *Brown* regarding the importance of elementary and secondary education is as compelling today with respect to higher education as it was in 1954 with respect to a high school diploma:

> Today, education is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship.

Brown I, 347 U.S. at 492-93.

Since the 1950's, the importance of higher education has become increasingly evident with dramatic increases in appropriations by the federal government in order to expand higher education opportunities.[79] Limitations on higher education opportunities have severe consequences,[80] as the

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[78] *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950); *Sweatt v. Painter*, 339 U.S. 629 (1950); *Sipuel v. Univ. of Oklahoma*, 332 U.S. 631 (1948); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

[79] In the post-*Brown* era, the federal government enacted a massive array of statutes aimed at improving the quality of, and facilitating access to higher education. *See generally* 20 U.S.C.S. § 1001-1146a.

[80] College graduates and those with some college education were the fastest growing groups in the work force in the 1980's. Dept. of Labor, (continued...)

three-judge district court recognized in *United States v. Louisiana*, 692 F. Supp. 642 (E.D. La. 1988):

> In vast, ever-growing segments of the American workforce, a high school diploma is not enough; a college education is often more critical than a high school education. The argument that the State requires students to attend primary and secondary school but cannot, or at least does not, require them to attend college fails to acknowledge the realities of our nation today.

Id. at 656 (citations omitted).

Limitations on higher educational opportunities for blacks in Mississippi have severely and adversely impacted the lives of black Mississippians. The Brewton Report pointed out the following:

> [W]hen the 1945 survey was made there were 22 times as many white doctors in Mississippi in

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[80] (...continued)
Occupational Quarterly Outlook 3 (Summer 1990). The Dept. of Labor found that this trend will continue as jobs become more complex and the skills required to perform them increase. While the total number of jobs available will increase by only 15% by the year 2000, the number of jobs available for college graduates will increase by 50%. *Id.* at 6. In sum, more than half of all new jobs created by the year 2000 will require more than a high school education. Dept. of Labor, Dept. of Educ., and Dept. of Commerce, *Building a Quality Workforce* 10 (1988). In addition to employment opportunities, higher education leads to increased earning power. For example, the average monthly income for persons with doctorate ($4,118) and professional ($4,323) degrees is approximately double that for those with bachelors degrees ($2,109) and four times that for those who hold only high school diplomas ($1,135). Bureau of the Census, U.S. Dept of Commerce 8, (Series P-70, No. 21) (Spring 1987).

> proportion to the white population as Negro doctors in proportion to the Negro population; 13 times as many dentists, 5 times as many pharmacists, 420 times as many lawyers, and 40 times as many social workers.
>
> From 1948-1953, the institutions for white students in the State conferred 14,205 degrees, one for every 131.1 white persons in the population; whereas the colleges for Negroes conferred 1,268 degrees, or one for every 778.1 Negroes in the total population.

(PX 200 at 149-50.)[81] The impact of the cumulative educational deficit suffered by black Mississippians is reflected in the fact that in 1979, 44.4% of Mississippi's black citizens still lived below the poverty line, compared to 12.7% of its white citizens (PPA 116).

This Court's resolution of the question whether the affirmative duty applies to Mississippi's higher education system will determine whether Mississippi's black citizens will be afforded educational opportunities equal to those

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[81]These disadvantages continue today, as reflected in the facts proved at trial. In Mississippi, between 1982 and 1986, for example, blacks received only 4.5% of the medical degrees and 4.4% of the dental and law degrees granted (PPA 179-204). The proportion of degrees received by blacks from undergraduate (23.9%) and graduate (20.6%) schools, *id.*, while higher than that for professional schools, remains significantly below the proportion of black public high school graduates (45.4%)(PPA 151). Furthermore, black participation in graduate programs has declined in *absolute and relative* terms since the 1970's. While non-black enrollment in graduate and undergraduate programs increased between 1978 and 1986, black enrollment decreased by 28% in graduate programs and 14% in undergraduate programs. (USX 172-190, PPA 137).

afforded Mississippi's white citizens. This is the same question the Court faced in *Green* where it found that 13 years of inaction had left the school children of New Kent County in segregated schools, where black children faced overcrowding and other educational disadvantages. The situation in Mississippi's higher education system today is no different. It cannot be argued with reason or persuasion that the majority of the black college students in Mississippi receive an education of a quality equal to that received by Mississippi's white students. Nor could it be argued that the same harmful effects of racial segregation and discrimination condemned in *Brown* are not present here. The constitutional promise of equal protection for Mississippi's black citizens makes it imperative that much more be done. The standard endorsed below is flawed because it denies a remedy for this constitutional violation.

C. *Mississippi Has Failed to Eliminate the Dual System "Root and Branch."*

1. Mississippi Must Eliminate Continuing Intentional Discrimination.

This Court has mandated that states must cease the operation of intentionally discriminatory practices. *Hunter v.*

Underwood, 471 U.S. 222 (1985). Mississippi continues to operate a system whose structure and admissions standards concededly are based on intentional discrimination and the effect of which continues to be discriminatory. While, Mississippi has abandoned its laws explicitly assigning students on the basis of race, it has otherwise continued to operate the same system through the use of facially race-neutral policies that incorporate, rather than eliminate, the effects of past intentional discrimination.[82]

The record reveals and the district court found an unbroken chain of intentionally discriminatory state action in establishing the structure of the dual system from its inception until at least the late 1960's when the first blacks were admitted to HWIs.[83] This record of inequality continued

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[82]The district court's analysis, ultimately affirmed by the *en banc* majority, was inadequate in part because it appears to have concluded that the continued existence of policies and practices rooted in discrimination were to be judged by the current intent of state actors ("defendants do not dispute [the existence or scope of the dual system]. The fundamental issue before the court at this time, however, is whether defendants are *currently* committing violations of the Thirteenth and Fourteenth Amendments, Title VI and 42 U.S.C. § 1981" (empahsis added) (PA 169a-70a).

[83]The district court found that defendants racially segregative policies in 1962 encompassed: "(1) student enrollment, (2) maintenance of branch centers of historically white universities in close proximity to the historically black universities, (3) employment of faculty and staff, (4) (continued...)

through the 1970's, when the state, disregarding federal mandates, continued to make funding, admissions, and curricular decisions that reinforced the dual structure of the system.[84] The findings of the *en banc* majority acknowledge that the current "disparities are very much reminiscent of the prior system," (PA 37a), and that the "inequalities among the institutions largely follow the mission designations, and the mission designations to some degree follow the historical racial assignments." *Id.* Defendants admit that the mission designations simply maintained the status quo. (Tr. 3656 (T. Meredith)). In short, the chain of intentional discrimination remains unbroken.

In addition to the intentionally discriminatory structure maintained by the mission designations, the two-tiered admissions standards for HBIs and HWIs (uniformly higher at HWIs) does not pass a test of even facial neutrality. The uniformly higher score required at the HWIs is the product of

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[83](...continued)
provision and condition of facilities, (5) allocation of financial resources, (6) academic program offerings, and (7) racial composition of the governing board and its staff. PA 169a. *See also* PX 200.

[84]*See supra* at 18-19; USX 407.

intentional discrimination from the "Meredith days," (USX 949 at 51), found by the district court to have been adopted because of its discriminatory impact on black students (PA 179a.) The Board expressly "maintained" those policies in 1976 (USX 48). They remain unchanged and continue to exclude black students from HWIs. Given Mississippi's failure to modify the two-tiered structure of its admissions policies at HWIs and HBIs which is the product of impermissible state action, the legacy of intentional discrimination continues.[85]

The continued use of a policy or practice founded with the intent to discriminate violates *Hunter v. Underwood*, 471 U.S. 222, unless the state proves that it would have taken the same action had it not acted with discriminatory intent. *Id.* at 228, *citing Mt. Healthy Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). Mississippi did not come forward with any evidence suggesting that the current structure of the system of higher education as set out in its mission designations would

[85]In *Hunter*, the Court rejected the state's arguments that the passage of time (80 years) had cleansed the provision of its impermissible purpose, even where the more blatant discriminatory measures had been removed. 471 U.S. at 232-33.

have been established absent racial discrimination. Nor did the state show that the uniformly higher admissions standards adopted at each HWI prior to the admission of a single black person would have been established absent racial discrimination. Without such a showing, a violation of the Equal Protection Clause clearly is established.

2. The State Must Eliminate Vestiges of the Dual System Which Continue to Impede Equal Educational Opportunity.

Even in the absence of a finding of continuing intentional discrimination, where a state has operated a former de jure segregated system, the affirmative duty requires it to eliminate the vestiges of that illegal system and their continuing impact.[86] Mississippi has failed to meet that obligation.

Mississippi has not taken adequate measures to desegregate its higher education system and to ensure that the legacy of segregation does not continue to deny black citizens

[86]*Bd. of Educ. of Oklahoma City Pub. Schools v. Dowell*, 111 S.Ct. 630 (1991); *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979); *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526 (1979); *Wright v. Council of City of Emporia*, 407 U.S. 451 (1972); *United States v. Scotland Neck City Bd. of Educ.*, 407 U.S. 484 (1972).

equal educational opportunity. For example, the state has largely restricted blacks to token representation on the Board of Trustees, never giving them an effective voice in the body charged with making fundamental decisions regarding the university system. Similarly, Mississippi has not overcome the legacy of the exclusion of black professors from employment at HWIs, but instead has allowed the faculty at those institutions to remain overwhelmingly white, while qualified black professors remain concentrated at HBIs. Nor has Mississippi substantially improved the quality of education offered at its HBIs in order to attract white students to those institutions. Instead it has ensured that those institutions offer fewer programs and receive less funding than HWIs, and, as a result, attract few white students.

At bottom, Mississippi, having discriminated against its black citizens by constructing a higher education system notorious for being both separate and unequal, has failed to take measures to overcome the effects of such discrimination and is in violation of the Constitution.

D. *The En Banc Majority Erred In Concluding That Mississippi Need Not Take Additional Steps To Dismantle Its Racially Dual Structure Because To Do So Would Preclude Diversity Among Institutions and Student Choice.*

1. The Diversity and Choice Ultimately Protected By the Majority Decision Are Based Upon the Stigma of Racial Inferiority Precluded By *Brown*.

Amici agree that diversity among institutions of higher education is a legitimate and valued goal. But, diversity based on racial distinctions derived from notions of racial inferiority is not. The diversity protected by the *en banc* decision, however, is that of the latter sort, and as such, it is constitutionally impermissible.

The *en banc* majority found the existing disparities among institutions "very much reminiscent" of the dual system (PA 37a). Neither the district court nor the *en banc* court found that the state had disestablished the racial designations of its institutions or the structure supporting the dual system. Nonetheless, the courts approved the continued racial identity of institutions and operation of a dual structure on the ground that students may now choose to follow the

state's continuing racial designations or, in effect, decide to cross the color line. Student selection of universities in Mississippi today is not free of the vestiges of the state-enforced racial discrimination that permeated all aspects of life,[87] or the continued operation of the dual system today.[88] Choices so heavily influenced by state action are not free. Thus, it is not surprising that 99% of Mississippi's white students continue to "choose" historically white institutions.[89] The small number of black students who can overcome the ACT barrier[90] can "choose" between attending an

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[87]In *Brown II*, the Southern States were adamant that segregation was so firmly rooted that it would take years to undo. *See e.g.* Amicus Brief for Attorney General of North Carolina at 36 ("[a] social order which is the product of three centuries . . . cannot be transformed overnight"); Oral Argument in *Brown II* of S.E. Rogers, on behalf of R.W. Elliott, at 24 (we cannot "push the clock forward abruptly to 2015 or 2045"); *see* R. Kluger, *Simple Justice*, 729-36 (1976).

[88]The record demonstrates that there are strong disincentives for white students to attend HBIs (even where an HBI is the most convenient geographically or offers the programs the student needs), because of the continuing racial identifiability and stigma of inferiority originally imposed on HBIs by the state (USX 16, USX 23 [letters from whites avoiding Jackson State because of perceptions that the school is an inferior institution and because of its racial identity]).

[89]USX 880.

[90]Black freshman enrollment in Mississippi's system in the early 1980's was approximately 30%, but has steadily declined since. USX 172-90. Of that 30% system-wide, only 30% are eligible for the HWIs. Thus, no HWI has an enrollment above 18% black. In school year 1985-

(continued...)

underfunded and stigmatized HBI or an HWI where there are few black faculty or administrators and where racial abuse is expected, received and unaddressed by the institution.[91] The *en banc* majority concluded that "all students have real freedom of choice to attend the college or university they wish," (PA 2a), but for 70% of the black students those choices are restricted to the three underfunded HBIs or, according to the lower courts, a junior college.[92]

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[90](...continued)
86, the University of Mississippi had a 5.9% black student enrollment and Mississippi State had a black student enrollment of 11.3%. PPA 137.

[91]Tr. 2659-2692, 2709-2774, 2777-2803.

[92]The junior college option relied upon by the *en banc* majority and the district court as an avenue for blacks to gain admission to HWIs (PA 32a-33a) does not provide equal opportunity to the black students who are precluded from direct admission as freshmen at HWIs. First, the state presented no evidence to suggest that the quality of education or funding of a junior college is equal or even comparable to that at the senior colleges. Second, there is an obvious difference between attending a comprehensive institution for four years as compared with attending a junior college for two years and a comprehensive institution for two years. Third, the state failed to produce any evidence regarding the actual numbers of blacks transferring from the junior colleges to senior colleges, or the extent to which such transfers are encouraged and explained to students in the junior colleges or high schools. For its conclusion that substantial numbers of students transfer, the district court relied upon the deposition testimony of one witness from the Mississippi University for Women. (PA 133a.) The testimony refers only to a two-year period at that University, does not provide any numbers of actual transfers, and states only that the "number of transfers had significantly increased" during that period (USX 965, p. 117). The witness did not provide the number of junior college transfers previously at the institution in order to allow the court to weigh the meaning of "significantly increased".

(continued...)

The choices that Mississippi makes available are the products of racial discrimination. *Brown* decided that a state may not make such choices available to its citizens.[93]

2. The Majority Erred In Concluding That Any Remedy Would Destroy the System By Precluding Diversity of Institutions.

The majority rejected *Green's* affirmative duty standard because it concluded that it "would impose a regime of imperatives and uniformity on what are in-essence diverse institutions, and in doing so would destroy the choices available to both black and white citizens" (PA 24a). Initially, it must be emphasized that there has never been a remedial hearing in this case (PPA 99-101). Therefore, the majority was at least premature in its conclusion that any

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[92](...continued)
Moreover, it is clear that whatever the transfer rate, the number of blacks attending HWIs is quite low.

[93]Other than the arguments specifically relating to the Title VI regulations, the discussion of *Bazemore, supra* at § II.D, is equally applicable to the constitutional issues discussed here. An additional distinction, however, exists in the constitutional argument. In *Bazemore* the Court accepted the government's argument, which stated, *inter alia*, that "a system does not become unitary in all respects simply by curing its prior discriminatory *admissions*," *Bazemore* Fed. Br. at 41 n.45 and that a higher education system "must take affirmative remedial action not only with respect to admissions, but also, for example, faculty, facilities and lingering funding disparities before it will become unitary in all respects." *Id.* at 49 n.48. Under this approach, the lower courts erred in applying *Bazemore*.

remedy would preclude diversity among institutions (PA 24a), and *amici* submit, ultimately wrong that desegregation precludes legitimate diversity and student choice.

There are many remedial measures that advance disestablishment of a segregated and discriminatory system and encourage legitimate diversity among institutions and student choice. The HEW Criteria, developed with the aid and advice of college presidents, education officials, aides to governors, students and others, reflect the agency's expertise in higher education desegregation and suggest desegregation strategies that recognize and incorporate institutional diversity and student choice. 43 Fed. Reg. 6658. Nothing in the guidelines suggests or encourages a structure of uniformity in state systems of higher education. In fact, the opposite is encouraged as the Criteria urge the elimination of unnecessary program duplication and the development of unique program offerings at HBIs to attract white students.[94]

---

[94]Nor have any of the more than ten state systems of higher education that designed and operated desegregation plans developed pursuant to the HEW Criteria developed into the uniform and non-diverse systems anticipated by *en banc* majority. Maryland, Kentucky, Texas, Arkansas, Oklahoma, Florida, Georgia, Delaware, Virginia and other states have operated under plans developed pursuant to the Criteria.

Furthermore, *amici* respectfully, but strongly, disagree with the conclusion of the *en banc* majority that measures taken to upgrade the HBIs would lead to "separate but equal" schools (PA 37a). *Amici* note that Mississippi's current system is, as it has always been, a separate and most unequal system that perpetuates notions of racial inferiority challenged and rejected in *Brown*.[95] The inclination toward separateness cultivated by Mississippi's long history of discrimination can be addressed in the remedial phase of the case by requiring the state to take all steps practicable to encourage other-race attendance at HBIs and HWIs. Again the HEW Criteria suggest available measures, and require that the HBIs be desegregated, 43 Fed. Reg. 6662. Clearly, remedial measures are available that would not force "separate" schools.

No discussion of potential remedies can ignore the suggestions made throughout this litigation that the appropriate remedy would be simply to close or neglect the

[95] *Brown I*, 347 U.S. at 494. *See* Brief for Appellants in Nos. 1, 2 and 4 and for Respondents in No. 10 on Reargument in *Brown I* at 50-66.

HBIs. *Amici* strongly urge the Court to reject that notion as offensive to the Constitution. In *Adams v. Richardson*, 480 F.2d at 1165, the *en banc* Court of Appeals for the District of Columbia Circuit unanimously recognized the crucial role played by the HBIs in higher education and the need to "take into account the special problems of minority students and Black colleges." On remand, the district court ruled, consistent with other courts supervising desegregation remedies, that the burdens of desegregation must be borne equitably.[96] Fulfillment of *Brown II's* mandate of a "racially nondiscriminatory school system" requires that old forms of discrimination not be replaced with new ones. A remedy that abandons or neglects the HBIs,[97] the only institutions that

[96] *Adams v. Califano*, 430 F. Supp. 118, 120 (D.D.C. 1977) ("The process of desegregation must not place a greater burden on Black institutions or Black students' opportunity to receive a quality public higher education.") *See also United States v. Bd. of Educ. of Waterbury*, 560 F.2d 1103 (2d Cir. 1977); *Keyes v. School Dist. No. 1, Denver*, 521 F.2d 465, 479 (10th Cir. 1975); *Arvizu v. Waco Indep. School Dist.*, 495 F.2d 499, 504 (5th Cir. 1974); *Lee v. Macon County Bd. of Ed.*, 448 F.2d 746, 753-54 (5th Cir. 1971); *McPherson v. School Dist. No. 186*, 426 F. Supp. 173, 187 (S.D. Ill. 1976).

[97] *Amici* are not suggesting that no changes could be made in HBIs or that no programs at HBIs could ever be discontinued, or that no HBI could ever be closed. *Amici* are suggesting that it would be unconstitutional to close or downgrade only HBIs and to rationalize these decisions by pointing to the results of generations of the state's neglect and underfunding. *cf. Mt. Healthy, supra* at 54.

consistently show a commitment to redressing the educational deficits visited upon the black citizens of Mississippi, will further limit equal educational opportunity for black citizens.[98] That would be a perverse remedy for the victims of Mississippi's discrimination.

* * *

The critical finding by the *en banc* court is that the disparities among institutions continue, and that those disparities were rooted in the dual system. The mission designations simply maintain the dual system under another name. Likewise, the intentionally discriminatory ACT minimums at the HWIs exclude the majority of black students from those institutions that are best supported by the state and where the overwhelming majority of Mississippi's white students are educated. Thus not only has the dual system continued to exist, it has not even been cleansed of its intentionally discriminatory origins. Accordingly, Mississippi is in violation of the Equal Protection Clause because of the continuing nature of its intentional violation, *Hunter v. Underwood*, and because it has failed to satisfy its affirmative duty to eliminate the vestiges of the dual system, *Dowell, Swann, Green, Brown II.*

[98] 43 Fed. Reg. 6662 (recognizing that certain approaches would be likely to impede educational opportunities for black students).

CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to reverse the decision below and remand the case for a remedial hearing.

Respectfully submitted,

Janell M. Byrd
NAACP Legal Defense and Educational Fund, Inc.
1275 K Street, N.W.
Suite 301
Washington, DC 20005
(202) 682-1300

John A. Powell
American Civil Liberties Union Foundation
132 W. 43rd Street
New York, NY 10036
(212) 944-9800

*Julius LeVonne Chambers
Charles Stephen Ralston
Norman J. Chachkin
NAACP Legal Defense and Educational Fund, Inc.
99 Hudson Street
16th Floor
New York, NY 10013
(212) 219-1900

John W. Garland
Adjoa Aiyetoro
National Conference of Black Lawyers
1926 6th Street, N.W.
Washington, D.C. 20001
(202) 387-5960

Counsel for Amicus Curiae
**Counsel of Record*

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Nos. 90-6588 and 90-1205

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

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Petitioners,

v.

RAY MABUS, GOVERNOR,
STATE OF MISSISSIPPI, *et al.*,
Respondents.

UNITED STATES OF AMERICA,
Petitioner,

v.

RAY MABUS, GOVERNOR,
STATE OF MISSISSIPPI, *et al.*,
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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF JOSEPH A. CALIFANO, JR., MARY F. BERRY, ERNEST L. BOYER AND DAVID S. TATEL

JOSEPH A. CALIFANO, JR.
DEWEY BALLANTINE
1301 Avenue of the Americas
New York, NY 10019
(212) 259-8600

DAVID S. TATEL *
HOGAN & HARTSON
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5787

* Counsel of Record

Attorneys for Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Joseph A. Califano, Jr., Mary F. Berry, Ernest L. Boyer, and David S. Tatel respectfully move for leave to file the attached brief *amici curiae*. In support of this motion, *amici* state as follows:

1. Movants have obtained the consent of counsel for the private plaintiffs, petitioners in No. 90-6588, to the filing of the attached brief. Moreover, the consent of the Solicitor General of the United States, petitioner in No. 90-1205, has been obtained. Counsel for Governor Ray Mabus and the other State of Mississippi respondents, however, refused to consent to the filing of the attached brief.

2. The private plaintiffs, in their petition in No. 90-6588, contend that the Mississippi officials have not fulfilled the remedial obligations imposed upon them by Title VI and its implementing regulations. Indeed, the private plaintiffs set forth as a separate question for review: "Whether the court of appeals erred by failing to apply a Title VI regulation [34 C.F.R. 100.3(b)(6)(i)] addressing defendants' remedial obligation * * * in a manner consistent with administrative standards * * *." This Court granted certiorari with respect to this question, in the form in which it was presented by the private plaintiffs.

3. The Title VI regulations of the Department of Education have been interpreted by the Amended Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education (hereinafter "the Criteria"), 43 Fed. Reg. 40780 (1977). The Criteria not only shed light on the proper interpretation of the Title VI regulations at issue, they also demonstrate that it is possible to develop workable desegregation remedies that are consistent with the principles set forth in *Green v. County School Board*, 391 U.S. 430 (1968), and *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1 (1971), and which reflect the important differences between higher education and elementary and secondary school systems.

4. Movants submit that their unique perspective on the Criteria will assist the Court in resolving this case. Between 1977 and 1979, the movants were responsible for developing and implementing the Criteria. In carrying out these tasks, the movants consulted extensively with members of the higher education community. The movants thus not only are familiar with the process by which the Criteria were developed, they also have actual knowledge of the effect of the Criteria upon public colleges and universities.

For the foregoing reasons, *amici* submit that their brief provides an important perspective on relevant issues that differs from that of the parties. Movants respectfully request that their motion for leave to file a brief as *amici curiae* be granted.

Respectfully submitted,

JOSEPH A. CALIFANO, JR.
DEWEY BALLANTINE
1301 Avenue of the Americas
New York, NY 10019
(212) 259-8600

DAVID S. TATEL *
HOGAN & HARTSON
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5787

* Counsel of Record

Attorneys for Amici Curiae

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BRIEF *AMICI CURIAE* OF JOSEPH A. CALIFANO, JR., MARY F. BERRY, ERNEST L. BOYER AND DAVID S. TATEL

INTEREST OF *AMICI CURIAE*

Amici were the officials of the U.S. Department of Health, Education and Welfare ("HEW") who, in 1977, developed and issued the Amended Criteria Specifying Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education, 42 Fed. Reg. 40780

(1977) (hereinafter "the Criteria"). The Criteria were issued pursuant to an order of the United States District Court in *Adams v. Califano*, 430 F. Supp. 118 (D.D.C. 1977). They were designed to govern HEW's review of higher education desegregation plans submitted by six southern and border states: North Carolina, Georgia, Florida, Virginia, Oklahoma and Arkansas. On February 15, 1978, the Amended Criteria were reissued and made applicable to all states that once operated systems of higher education segregated by law. 43 Fed. Reg. 6658 (1978).

This *amicus* brief describes the Criteria and the principles upon which they were based. We prepared the brief because, although the parties will present the legal arguments relevant to defining the appropriate standard to govern the higher education desegregation process, the Criteria are also relevant because they demonstrate that it is possible to develop workable desegregation remedies that are consistent with the principles set forth in *Green v. County School Board*, 391 U.S. 430 (1968), and *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), and which both reflect the important differences between higher education and elementary and secondary school systems and are compatible with the independence and autonomy so important to the proper functioning of colleges and universities.

Joseph A. Califano, Jr. was Secretary of the U.S. Department of Health, Education and Welfare from 1977 to 1979. He is now a member of the New York law firm of Dewey Ballantine.

Dr. Mary F. Berry was Assistant Secretary for Education from 1977 to 1979. Prior to that, she served as Chancellor of the University of Colorado at Boulder, and she is currently a member of the Commission on Civil Rights and a professor of American Social Thought and History at the University of Pennsylvania.

Dr. Ernest L. Boyer was the U.S. Commissioner of Education from 1977 to 1979. Prior to becoming Commissioner, he served as Chancellor of the State University of New York. He is currently President of the Carnegie Foundation for the Advancement of Teaching.

David S. Tatel was Director of HEW's Office for Civil Rights from 1977 to 1979. He is now a member of the Washington, D.C. law firm of Hogan & Hartson.

SUMMARY OF ARGUMENT

As officials of HEW in 1977, we prepared the Amended Criteria Specifying Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education to guide the development of desegregation plans by southern and border states that once operated systems of higher education segregated by law. The Criteria reflect three fundamental principles. First, they are based on the principles set forth in *Green* and *Swann*, and they reflect the fundamental differences between higher education and elementary and secondary school systems. Second, the Criteria establish overall goals to measure the effectiveness of desegregation efforts, but in order to preserve the independence and autonomy of higher education, the states are left free to develop their own measures for accomplishing those goals. Goals established by the Criteria are flexible benchmarks, not quotas. And finally, the Criteria include several provisions designed to strengthen the historically black colleges in order to ensure that they are able to participate in the desegregation process and to avoid placing a disproportionate burden on black students, faculty and institutions.

We developed the Criteria through a process that included extensive consultation with the higher education community. They stand as an example of a workable desegregation remedy that is consistent with *Green* and *Swann*, and that takes account of the unique characteristics and autonomy of higher education.

ARGUMENT

I. BACKGROUND OF CRITERIA

In 1969 and 1970, the Office for Civil Rights ("OCR") of the U.S. Department of Health, Education and Welfare notified ten southern and border states that they were operating their systems of higher education in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Each state was requested to submit a desegregation plan. Several of the states submitted plans that OCR determined to be unacceptable, while other states submitted no plans at all. OCR, however, took no further action.

In February 1973, the U.S. District Court for the District of Columbia ordered HEW to take appropriate enforcement action pursuant to Title VI. *Adams v. Richardson*, 356 F. Supp. 92 (D.D.C.), *aff'd*, 480 F.2d 1159 (D.C. Cir. 1973). In response, OCR asked the states to submit revised plans, and in 1974 accepted the plans submitted by eight of the ten states. OCR determined that the plans of Mississippi and Louisiana were unacceptable and therefore referred the matters to the Department of Justice. The Department of Justice thereafter filed several lawsuits, one of which ultimately led to these proceedings.

On April 1, 1977, the U.S. District Court ruled that the 1974 plans had failed to achieve significant desegregation and ordered HEW to develop and issue criteria to guide the states in the development of revised desegregation plans. 430 F. Supp. 118. It was in response to this order that *amici* developed the Criteria and published them in the Federal Register on August 11, 1977. *Id.* The Criteria were designed to govern OCR's review of revised desegregation plans that the states of North Carolina, Virginia, Florida, Georgia, Arkansas and Oklahoma were required to submit within 90 days. On February 15, 1978, the Criteria were reissued and made applicable to all states that operated higher education systems once segregated by law. 43 Fed. Reg. 6658 (1978).

II. PRINCIPLES UNDERLYING THE DEVELOPMENT OF THE CRITERIA

Three fundamental principles guided our development of the Criteria: the higher education desegregation process is governed by the principles set forth in *Green* and *Swann*, but fundamental differences between higher education and elementary and secondary school systems must be taken into account in developing an appropriate remedy; the Criteria should establish overall goals to measure the effectiveness of desegregation efforts, but in order to preserve the independence and autonomy of higher education, the states should be free to develop their own measures for accomplishing those goals; and finally, the higher education desegregation process must be implemented so as to avoid placing a disproportionate burden on black students, faculty, and institutions. Each of these principles is discussed below.

A. The Higher Education Desegregation Process is Governed by the Principles Set Forth in *Green* and *Swann*, But Fundamental Differences Between Higher Education and Elementary and Secondary School Systems Must be Taken Into Account in Developing a Remedy

The Criteria are based on the principles set forth in *Green* and *Swann*. That is, they are based on the propositions that states must take affirmative steps to desegregate their formerly segregated systems of higher education and that the constitutional measure of the states' efforts is their effectiveness. 42 Fed. Reg. 40780 (1977). Our reasons for this position were two-fold: we read the decisions of the federal courts as requiring the application of *Green* and *Swann*, *e.g.*, *Norris v. State Council of Higher Educ.*, 327 F. Supp. 1368 (E.D. Va.), *aff'd per curiam*, 404 U.S. 907 (1971); *Lee v. Macon County Bd.*

of Educ., 267 F. Supp. 458 (M.D. Ala.), *aff'd*, 389 U.S. 215 (1967); *Geier v. Dunne*, 337 F. Supp. 573 (M.D. Tenn. 1972); and in our judgment, a policy of nondiscrimination in admitting students and employing faculty and staff, by itself, would not have been sufficient to eradicate the effects of the racially dual system of higher education.

In developing the Criteria, however, we fully understood that "* * * the nature of the remedial action required of a higher education system will differ from that required of a local education district." 42 Fed. Reg. at 40781. Elementary and secondary education is free and compulsory and students can be assigned to schools. None of this, of course, is true at the higher education level, and these differences were reflected in the Criteria, as were other major differences between elementary and secondary education and higher education:

> Besides being voluntary rather than compulsory, higher education operates on a statewide or regional basis, not local; there are no 'attendance zones' in higher education; higher education programs vary from institution to institution and are not uniform; students are free to leave the state or to attend private colleges in pursuit of a higher education.
>
> Furthermore, from state to state significant differences are to be found and must be taken into consideration. In some states [a] strong centralized 'system' exists including four year and two year institutions; in others, the four year and two year institutions report to separate boards; in yet others, each institution operates under its own independent board. While none of these differences relieves a state of its obligations under Title VI or its constitutional duties, they must be taken into account in fashioning an appropriate set of criteria * * *.
>
> Accordingly, while desegregation cases involving individual elementary and secondary school districts are a guide to a state's duty to take corrective action, they are not dispositive of the particular methods to

> be designed for the dismantling of a dual system of higher education, for the desegregation of a statewide system, for the removal of the vestiges of racial segregation, and for the correction of 'systemwide racial imbalance.'

Id. at 40781-82.

We also made it crystal clear that, in developing plans consistent with the Criteria, states were not expected to reduce their admissions standards:

> * * * under these criteria and the goals they set, all applicants must be able to compete successfully. States' efforts under these criteria need not and should not lead to lowering academic standards. States may need to innovate in seeking out talented students who will profit from higher education. They may need to broaden definitions of potential; to discount the effects of early disadvantage on the development of academic competence; and to broaden the talents measured in admission tests. But new and different yardsticks for measuring potential are not lower standards. They can be more valid measures of true potential and talent. Taken as a whole, these criteria seek to preserve and protect academic standards of excellence.

Id. at 40781.

In order to ensure that the Criteria reflected the unique characteristics of higher education and were educationally sound, Secretary Califano directed that they be developed by an interdepartmental task force that included among its members *amici* Boyer, Berry and Tatel. The task force conferred with representatives of all six states, individually and as a group. It also consulted with the leadership of the country's historically black colleges. Two panels of nationally recognized educators met for two half-day sessions to advise the task force.

B. The Criteria Should Establish Overall Goals to Measure the Effectiveness of Desegregation Efforts, But In Order to Preserve the Independence and Autonomy of Higher Education, The States Should Be Free to Develop Their Own Measures For Accomplishing Those Goals

In addition to responding to the nature of higher education and to its differences from elementary and secondary school systems, we designed the Criteria to be responsive to a major concern of southern higher education leaders. When we came into office and began our meetings with them to develop these Criteria, they told us that under the prior administration, the Office for Civil Rights had been entirely too intrusive. They told us that OCR had been telling them where to recruit, how often to recruit, and even who to recruit. They pleaded with us to draft criteria that set clear and measurable objectives for the desegregation process, and then to stand back and allow the colleges and universities themselves to develop the means by which they would attain the standard.

For this reason, the Criteria contain numerical goals and timetables. As we said in the introduction of the Criteria:

> The goals are established as indices by which to measure progress toward the objective of eliminating the effects of unconstitutional de jure racial segregation and of providing equal educational opportunity for all citizens of these states. They are benchmarks and provide the states the clear and specific guidance called for by the Court.

Id. at 40781. At the same time, we emphasized that the goals are not quotas:

> These goals are not quotas. The Department is opposed to arbitrary quotas. Failure to achieve a goal is not sufficient evidence, standing alone, to establish a violation of Title VI. In addition, the Office for Civil Rights upon a showing of exceptional hardship or special circumstances by a state, may modify the goals and timetables.

Id.

C. The Higher Education Desegregation Process Must Be Implemented So As To Avoid Placing A Disproportionate Burden on Black Students, Faculty, and Institutions

The Court of Appeals directed that the Criteria take "into account the special problems of minority students and of Black colleges. . . . [T]hese Black institutions currently fulfill a crucial need and will continue to play an important role in Black higher education." *Adams v. Richardson*, 480 F.2d at 1164-65.

The District Court was even more specific. It stated:

> The process of desegregation must not place a greater burden on Black institutions or Black students' opportunity to receive a quality public higher education. The desegregation process should take into account the unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks. Without suggesting the answer to this complex problem, it is the responsibility of HEW to devise criteria for higher education desegregation plans which will take into account the unique importance of Black colleges and at the same time comply with the Congressional mandate.

430 F. Supp. at 120 (footnote omitted).

We took these directives into account as we drafted the Criteria. We made it clear, however, that we did not interpret the directives of the courts to mean that "the traditionally black institutions are exempt from the Constitution or the requirements of Title VI." 42 Fed. Reg. at 40782. Instead, we stated:

> . . . traditionally black and traditionally white institutions are subject to the same constitutional and

> congressional mandate to provide an education to all citizens without discrimination or segregation. White and black institutions are to function as part of a unitary system free of the vestiges of state imposed racial segregation. However, as the Court has instructed, the transition to a unitary system must not be accomplished by placing a disproportionate burden upon black students, faculty, or institutions or by reducing the educational opportunities currently available to blacks.

Id.

III. DESCRIPTION OF THE CRITERIA

The Criteria contain four sections, relating to dismantling the structure of the dual system (Section I), desegregation of student enrollment (Section II), desegregation of faculty, administrative staffs, non-academic personnel and governing boards and staff (Section III), and submission of plans and monitoring (Section IV). Each section includes a series of goals or commitments which the states are asked to incorporate in their desegregation plans. The Criteria also call for the states to commit themselves to a series of measures to accomplish the goals, but in order to avoid unnecessary OCR intrusion into the independence and autonomy of higher education, the Criteria specify that the states are to develop the measures and submit them to OCR as a supplement to their plans. Measures could be rejected by OCR only if they "offered no reasonable possibility of achieving the goals." *See e.g.*, Criteria § I.H.

A. Disestablishment of the Structure of the Dual System

The first section of the Criteria calls for the states to commit themselves to the goal of "organizing and operating the system and institutions of higher education in a manner that promises realistically to overcome the effects of past discrimination and to disestablish the dual system and which assures that students will be attracted to each institution on the basis of educational programs and opportunities, uninhibited by past practices of segregation." Criteria § I. To accomplish this, the Criteria ask the states to define the missions of their institutions in non-racial terms. Criteria § I.A.

Once the states have adopted non-racial mission statements for each of their institutions, the Criteria call for them to take a number of steps to strengthen historically black institutions and to eliminate the vestiges of past segregation. For example, the Criteria call for the states to commit themselves to ensuring that historically black institutions will have programs and resources which are "at least comparable to those at traditionally white institutions having similar missions." Criteria § I.B.1. The states also were asked to take specific steps to "eliminate educationally unnecessary program duplication among traditionally black and traditionally white institutions in the same service area." Criteria § I.C. This criterion, which specifically exempted "core curricula," was designed to eliminate one of the primary vestiges of the *de jure* system of higher education: the extensive duplication of programs between historically white and historically black institutions in the same service area. This duplication lay at the heart of the *de jure* system and was one of the primary reasons why historically black and historically white institutions remained racially identifiable.

In order to further strengthen the historically black institutions, the states were asked to commit themselves to giving "priority consideration" to placing new undergraduate, graduate and professional programs at traditionally black institutions, "consistent with their missions." Criteria § I.D. Such programs would help to strengthen historically black institutions and give them the ability to attract white students. And finally, the Criteria called for each state to commit itself to "with-

hold approval of any changes in the operation of the state system or of any institutions that may have the effect of thwarting the achievement of its desegregation goals." Criteria § I.E.

We emphasize that the strengthening of the historically black institutions was sought as a means of achieving desegregation and enhancing educational and employment opportunities for black students. It was not intended to preserve particular institutions.

B. Desegregation of Student Enrollment

This section of the Criteria calls for the desegregation plan to "commit the state to the goal of assuring that the system as a whole and each institution within the system provide an equal educational opportunity, are open and accessible to all students, and operate without regard to race and on a desegregated basis." Criteria § II. In order to accomplish this goal, the Criteria asked the states to commit themselves to a series of specific goals designed to eliminate the disparity in the proportions of black and white high school graduates who enter state two-year and four-year undergraduate institutions, Criteria § II.A, reduce the gap between the percentages of black and white high school graduates in the state going on to traditionally white four-year institutions, Criteria § II.B, and eliminate the gap between the percentages of black and white college graduates going on to professional and graduate schools, Criteria § II.C. As indicated above, the Criteria made clear that these numerical commitments were goals only, not quotas, and the states were to develop their own recruiting, retention and other measures to reach the goals.

The Criteria also asked the states to commit themselves to reducing the disparity between the proportion of black and white students graduating from their two-year, four-year, and graduate institutions, Criteria § II.E, and to "expand mobility between two year and four year institutions as a means of meeting the goals set forth in these criteria." Criteria § II.F. The latter commitment was based on the fact that in each of the states covered by the Criteria, a disproportionate number of black students attended two-year institutions.

The Criteria also call for the adoption of desegregation goals for the black institutions. But in order to ensure that the desegregation process did not reduce educational opportunities for black students, the Criteria postponed the development of specific numerical goals for the traditionally black institutions until after significant steps had been taken to strengthen them and to increase the percentage of black students attending college generally and the traditionally white institutions in particular. Criteria § II.D.

C. Desegregation of Faculty, Administrative Staffs, Non-Academic Personnel and Governing Boards

The basic thrust of this section of the Criteria is for the states to commit themselves to the goal of "increasing the number and proportion of black employees, academic and non-academic, throughout the system and of increasing representation of black citizens among appointive positions on the governing boards of the state system and of individual institutions." Criteria § III. To achieve these goals, the Criteria call for the states to adopt a series of specific goals based on graduation rates of black students in appropriate disciplines or the availability of qualified black individuals residing in the relevant labor market areas. Criteria § III.A-D. These goals were to be achieved through measures adopted by the states which could include, among other activities, "employment programs providing centralized recruitment, vacancy and applicant listings; transfer options; faculty development programs permitting release time for black faculty to attain the terminal degree; and the interchange of faculty on a temporary or permanent basis among traditionally white and

traditionally black institutions within the state system." Criteria § III.F.

D. Submission of Plans and Monitoring

This section covers a variety of procedural matters, including timetables for the implementation of plans, Criteria § IV.A.1., and the requirement that each plan be signed by the governor, Criteria § IV.A.2. This section also includes procedures for annual reporting by states and for OCR review of state reports, Criteria § IV.D. Consistent with the basic principle that the goals set forth in the Criteria are flexible benchmarks and not quotas, this section gives states an opportunity to demonstrate "good cause" for failing to meet a goal. Criteria § IV.E.

CONCLUSION

We hope that the foregoing description of the Criteria and the principles upon which they were based will help the Court resolve the issues before it in this case. We would be pleased to respond to any specific questions the Court or the parties might have about the Criteria.

Respectfully submitted,

JOSEPH A. CALIFANO, JR.
DEWEY BALLANTINE
1301 Avenue of the Americas
New York, NY 10019
(212) 259-8600

DAVID S. TATEL *
HOGAN & HARTSON
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5787

* Counsel of Record

Attorneys for Amici Curiae

MOTION FILED
JUL 3 1991

No. 90-6588
No. 90-1205

In The

Supreme Court of the United States

October Term, 1991

JAKE AYERS, JR., et al.,

Plaintiff-Petitioners

UNITED STATES OF AMERICA

Plaintiff-Intervenor

v.

RAY MABUS, GOVERNOR, STATE OF MISSISSIPPI, et al.,

Defendant-Respondents

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

MOTION OF JACKSON STATE UNIVERSITY FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PLAINTIFF-PETITIONERS AND BRIEF

DEBORAH MCDONALD, Esquire
P.O. Box 1242
McComb, MS 39648
601/684-0578

CARROL RHODES, Esquire
P.O. Box 588
Hazlehurst, MS 39083
601/894-4323
(Counsel of Record)

CHOKWE LUMUMBA, Esquire
P.O. Box 575
McComb, MS 39648
601/684-0578

Attorneys for Jackson State University

July 3, 1991

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

MOTION OF JACKSON STATE UNIVERSITY FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PLAINTIFF-PETITIONERS

The moving party Jackson State University is a Historically Black Institution with a Black enrollment comprising over 91% of the University Student population.

Jackson State University moves for leave to file the attached brief supporting the Plaintiffs request that the decision of the Court of Appeals for the Fifth Circuit (en banc) be reversed and remanded for further proceedings in accordance with the decision of the Fifth Circuit Court of Appeals majority in *Ayers v. Allain,* 893 F.2d 732 (1990).

The private plaintiffs and the United States Government have consented to the filing of this brief. As of the final preparation of this brief the defendant-respondents had yet to state a position. Movant has requested the consent of the respondents.

The moving party, which is a Historically Black University within the Mississippi State Higher Education System, desires to draw this Court's attention to facts and legal precedent which demonstrate that the present system of funding and resource allocation to Historically Black Institutions in Mississippi by the State is a vestige of both slavery and discriminatory educational practices in Mississippi postdating slavery, and as such this system violates the 13th and 14th Amendments rights of Black persons throughout the State of Mississippi.

The highly relevant observations of the movants have not been brought to this Court's attention by the petitioners. Therefore, amicus participation will be of assistance to the Court.

Respectfully submitted,

DEBORAH A. MCDONALD, Esquire
P.O. Box 1242
McComb, MS 39648
801/684-0578

CARROL RHODES, Esquire
P.O. Box 588
Hazlehurst, MS 39083
601/894-4323
(Counsel of Record)

CHOKWE LUMUMBA, Esquire
P.O. Box 575
McComb, MS 39648
601/684-0578

QUESTION PRESENTED

WHETHER THE PRESENT SYSTEM OF FUNDING AND RESOURCE ALLOCATION TO STATE UNIVERSITIES IN MISSISSIPPI IS AN UNCONSTITUTIONAL VESTIGE OF SLAVERY AND POST SLAVERY EDUCATIONAL DISCRIMINATION?

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INTEREST OF THE AMICUS CURIAE

AMICUS CURIAE is a Historically Black University which currently has a student population which is over 91% Black. It is the largest predominantly Black University in the State.

The Amicus Curiae was an institution established to provide higher education to a Black population which was and is significantly denied the same by the State's Historically White Institutions. Over 70% of all Black students in Mississippi's college and university system now attend Historically Black Institutions.

Amicus Curiae is incapable of fulfilling its mission to provide a quality education and constitutionally required equal education opportunities to its students where State policy underfinances Black students' education by disproportionately providing resources to universities and to students through a system of procedures and policies which discriminate on the basis of race, and perpetuate historic practices which are separate and unequal.

STATEMENT OF THE CASE

Amicus Curiae accepts and adopts the Statement of the Case and the facts as presented in the Brief of the Private Plaintiff-Petitioners in this case.

The following facts are particularly relevant to the present contribution of Amicus Curiae. The State of Mississippi maintained a dual system of education based on a policy of absolute racial segregation through the spring of 1962. (*Ayers v. Allain, et al,* 893 F2d 732 at 743).

As of 1986 over 99% of the State's White students attend Historically White Institutions while over 71% of the Black students attend Historically Black Institutions. Over twice as many White students as Black students are enrolled in Mississippi Universities in undergraduate studies. Similar patterns exist with respect to graduate studies.

The majority of the Professors and Instructors at Historically Black Mississippi Institutions are Black, while no Historically White Institution of Higher Education in the State System has Black faculty which consist of over 5% of the whole.

With regard to educational funding and salaries for Instructors and Professors, Historically White Universities receive substantially more money and resources than those which are Historically Black. In other areas of resource allocations similar disparities are found. (*Ayers II*, at 735-742).

ARGUMENT

THE PRESENT SYSTEM OF FUNDING AND RESOURCE ALLOCATION TO STATE UNIVERSITIES IN MISSISSIPPI IS AN UNCONSTITUTIONAL VESTIGE OF SLAVERY AND POST SLAVERY EDUCATIONAL DISCRIMINATION.

In confronting the facts of this case one is reminded of the tale of "White Walt and the comely maiden Ebony Black."

It seems that Walt, a caucasian male, in an open and self declared act of disdain for Black females had chained and locked Ms. Black to the tracks of degradation.

There she laid in the path of the "Destruction Express". But due to the intervention of our heroic character, U.S. Constitution, Walt was constrained to renounce his foul views toward Black females. Indeed he declared that never again would he do what he had done to Ms. Black.

Astonishingly, however, when called upon to release Ms. Black from the tracks he declined, contending that his only obligation under his new philosophy was to devote himself to a race and sex neutral policy from henceforth. The past was the past, and bygones should be bygones, or so Walt said.

Even more astonishing was the fact that when asked again to intervene U.S. Constitution, our hero, hesitated to do so as his attention was drawn to a contest between various parties who debated Walt's obligations. Some actually said that Ms. Black was now free to arise and leave the track on her own, since Walt's new policy, at least on paper, presented no hinderance to her seeking a better plight. Admittedly, the Walt protagonists were forced to conceed, Ms. Black may have some difficulty acquiring the key or other resources necessary to disconnect herself from the track. Yet some, although not most, in Ms. Black's predicament had managed. At least this is what the "race and sex neutral" proponents said. Many challenged the logic and practical application of this so-called race and sex neutral position, and questioned whether this position was really what it purported to be.

The parties struggled back and forward with their observations and eloquent presentations. Then someone shouted "THE TRAIN IS COMING."

In Mississippi, gross and growing disparities continue in the level and amount of education received by Blacks as compared to Whites. Poverty and various other social pathologies intensify faster and expand because of the educational gap. There is little evidence that the social conditions and education of Blacks relative to Whites are substantially more equal than they were thirty years ago.

All concede that a racist unequal educational system in Mississippi was deliberately developed by the State. It is also uncontravertable that the educationally disparate impact on Blacks in Mississippi is still evident in the present system of higher education despite the curious designations of various Universities with various "missions", and the otherwise adoption of supposedly race neutral policy.

Yet Black higher education institutions were the predominant source of Black higher education before federal intervention forced the State to seek neutral names, and disguises for old practices, and Black higher educational institutions remain the predominant avenue for Black post high school education.

There could be many reasons for this situation which are not related to the exercise of White supremacist perogatives in the education system. (i.e. Black schools are often located in Black population districts, the desire of Blacks to obtain education which reinforce their heritage and so on.)

Yet there is no constitutionally permissible reason why Blacks who attend these Universities are victimized by the same funding inequalities and resource deprivations that bedeviled their predecessors over thirty years ago.

If only so-called comprehensive educational institutions are to receive the highest levels of funding, then Historically Black Institutions should not be denied the opportunity to share this designation and the resources which go with it.

The right to equal education for Blacks and Whites is a principle which all post Civil War cases have upheld. The State has the absolute obligation to ensure the same. *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 873 (1954); *Sweatt v. Painter*, 339 U.S. 629, 70 S. Ct. 848, 94 L.Ed.2d 1114 (1950); *McLaurin v. Oklahoma State Regents for Higher Educ.*, 339 U.S. 637, 70 S. Ct. 851, 94 L.Ed. 1149 (1950).

The facts of this case clearly show that equal opportunity in higher education is something which Blacks in Mississippi still do not have. As the Court so eloquently pointed out in *Ayers II, supra*, the Constitution demands that the State eradicate all vestiges of its racially discriminatory system. *Green v. School Board of New Keat County*, 391 U.S. 430, 88 S. Ct. 1689, 20 L.Ed. 2d 716 (1968); *Grier v. Alexander*, 801 F.2d 799 (6th Cir. 1986).

Such an obligation is not only imposed by the 14th Amendment's equal protection clause, but it is mandated by the 13th Amendment to the U.S. Constitution. The 13th Amendment not only abolishes slavery, but also abrogates the badges of this invidious institution. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

Just as this Court saw fit to strike down housing policies which were associated with a policy of White supremacy which arose from the system of slavery, so must it wipe out educational policies arising from White supremacy which has survived the slave system.

CONCLUSION

Consistent with the demands and requirements of the 14th and 13th Amendments, this Court should reverse the decision of the 5th Circuit (en banc) Court of Appeals and remand this case to the District Court to proceed in a mannor consistent with the opinion of the 5th Circuit in *Ayers II*.

Respectfully submitted,

DEBORAH A. MCDONALD, ESQUIRE,
P. O. Box 1242
McComb, MS 39648
601/684-0578

CARROL RHODES, ESQUIRE
P. O. Box 588
Hazlehurst, MS 39083
601/894-4323
(Counsel of Record)

CHOKWE LUMUMBA, ESQUIRE
P. O. Box 575
McComb, MS 39648
601/684-0578

APPENDIX

SOUTHWEST MISSISSIPPI
LEGAL SERVICES CORPORATION

[LOGO]

McCOMB BRANCH OFFICE
POST OFFICE BOX 675 • 221 MAIN STREET
McCOMB, MISSISSIPPI 39648
601-684-0578

July 1, 1991

Honorable Alvin O. Chambliss, Jr.
North MS Rural Legal Services
P. O. Box 928
Oxford, MS 38665

Re: Ayers et al v. Mabus et al
Number: 90-6588
90-1205

Dear Mr. Chambliss:

This is a brief letter confirming our oral request for the consent of your client to the filing of a Brief Amicus Curiae by Jackson State University.

Thank you for consenting to the same.

Sincerely,

/s/ Chokwe Lumumba
CHOKWE LUMUMBA
Attorney for Jackson
State University

gr

SOUTHWEST MISSISSIPPI
LEGAL SERVICES CORPORATION

[LOGO]

McComb Branch Office
Post Office Box 675 • 221 Main Street
McComb, Mississippi 39648
601-684-0578

July 1, 1991

Mr. Kenneth W. Starr
Solicitor General
U. S. Dept. of Justice
Washington, D.C. 20530

Attention: Jeffrey P. Minear

Re: Ayers et al, v. Ray Mabus, et al, 90-6588
U.S. Supreme Court

Dear Mr. Minear:

Pursuant to our conversation on June 27, 1991, I am forwarding you this written request for the consent of the Department of Justice to the filing of an Amicus Curiae Brief in the above referenced cause, by Jackson State University, one of the three Historical Black Universities in Mississippi.

You indicated by phone that the Department did consent to the same, unless we were notified of the contrary.

Thank you.

Sincerely,

/s/ Chokwe Lumumba
CHOKWE LUMUMBA
Attorney for Jackson
State University
P. O. Box 575
McComb, MS 39648

SOUTHWEST MISSISSIPPI
LEGAL SERVICES CORPORATION

[LOGO]

McComb Branch Office
Post Office Box 675 • 221 Main Street
McComb, Mississippi 39648
601-684-0578

July 1, 1991

Honorable Mike Moore
Attorney General
State of Mississippi
P. O. Box 220
Jackson, MS 39205

Re: Ayers et al v. Ray Mabus et al
No. 90-6588 – U.S. Supreme Court

Dear Attorney General:

I am writing to request the permission of the State of Mississippi to the filing of a Brief Amicus Curiae by Jackson State University in the above referenced cause.

I have attempted on two occasions to reach your Counsel, Attorney William F. Goodman, and Special Assistant Attorneys General Paul Stephenson III, and William P. Ray by phone to make this request.

I have left messages with a secretary at their office requesting the same. Mr. Ray returned one of my calls but I was not in my office. Consequently I am as of this date without a response from the State with regards to the request to consent to Amicus Curiae Brief by Jackson State University.

Please respond today as soon as possible.

Sincerely,
/s/ Chokwe Lumumba
CHOKWE LUMUMBA

gr

cc: William F. Ray
By Fax

Nos. 90-1205, 90-6588

Supreme Court, U.S.
FILED
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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA,

Petitioner

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *ET AL.*,

Respondents.

JAKE AYERS, SR., *ET AL.*,

Petitioners

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *ET AL.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

Motion For Leave To File Brief Amici Curiae And Brief Amici Curiae Of Charles E. "Buddy" Roemer, III, Governor Of The State Of Louisiana, Board Of Regents Of The State Of Louisiana, And Board Of Supervisors Of Louisiana State University And Agricultural And Mechanical College In Support Of Respondents

MARGARET E. WOODWARD*
610 Poydras Street, Suite 318
New Orleans, Louisiana 70130
(504) 525-9538

Counsel for Board of Regents of the State of Louisiana

W. SHELBY MCKENZIE*
NANCY C. DOUGHERTY
Taylor, Porter, Brooks & Phillips
451 Florida Boulevard
Baton Rouge, Louisiana 70801
(504) 387-3221

Counsel for Board of Supervisors of Louisiana State University and Agricultural and Mechanical College

JOHN N. KENNEDY*
Special Counsel to the Governor
Office of the Governor
4th Floor, State Capitol
P.O. Box 94004
Baton Rouge, Louisiana 70804
(504) 342-7015

JOSEPH J. LEVIN, JR.
JOHN M. FREEMAN
JOHANNA F. CHANIN
Colton and Boykin
1025 Thomas Jefferson St., N.W.
Suite 500 East
Washington, D.C. 20007
(202) 342-5400

Counsel for Governor Charles E. "Buddy" Roemer, III, Governor of the State of Louisiana

*Counsel of Record

Balmar Legal Publishing Division, Washington, D.C. 20005 (202) 659-3610

Nos. 90-1205, 90-6588

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OCTOBER TERM, 1990

UNITED STATES OF AMERICA,

Petitioner

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *ET AL.*,

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v.

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On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

Motion For Leave To File Brief Amici Curiae Of Charles E. "Buddy" Roemer, III, Governor Of The State Of Louisiana, Board Of Regents Of The State Of Louisiana, And Board Of Supervisors Of Louisiana State University And Agricultural And Mechanical College In Support Of Respondents

Governor Charles E. "Buddy" Roemer, III, Governor of the State of Louisiana, the Board of Regents of the State of Louisiana, and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (hereinafter "Movants") respectfully move for leave to file the attached brief amici curiae in support of the respondents. The Solicitor General of the United States and counsel for the respondents have consented to the filing of the attached brief. Counsel for the private petitioners have refused to consent to the filing of the brief.

The State of Louisiana and its higher education boards are engaged in litigation with the United States which also seeks judicial determination of the standard applicable to desegregation of higher education. *United States v. Louisiana*, 427 F. Supp. 509 (E.D. La. 1981); 692 F. Supp. 642 (E.D. La. 1988); 718 F. Supp. 499, 521, 525 (E.D. La. 1989); 751 F. Supp. 606 (E.D. La. 1990). The Louisiana case is presently pending before the United States Court of Appeals for the Fifth Circuit in consolidated case number 90-3874, consideration of which has been stayed pending the disposition before this Court of *Ayers v. Allain*, 914 F.2d 676 (5th Cir 1990) (en banc), *cert. granted sub nom. Ayers v. Mabus*, ___ U.S. ___, 111 S.Ct. 1579 (1991) (consolidated with *United States v. Mabus*, ___ U.S. ___, 111 S.Ct. 1579 (1991)).

The Louisiana litigation addresses issues of law substantially similar to those presently at bar. Additionally, under a negotiated Consent Decree, Louisiana gained valuable experience, at great cost, in what steps are unreasonable, impractical and educationally unsound in attempting to achieve greater racial mixture of Louisiana's predominantly black institutions. Movants submit that knowledge of this experience will prove helpful to the Court in determining the appropriate standard of liability. Furthermore, Movants have access to information, not heretofore presented to the Court, concerning the development of the criteria issued by the former Department of Health, Education and Welfare ("HEW") discussed at length in the Brief *Amici Curiae* of Joseph A. Califano, Jr., Mary F. Berry, Ernest L. Boyer and David Tatel at 1-14, the Brief of the NAACP Legal Defense and Educational Fund, Inc., American Civil Liberties Union, and the National Conference of Black Lawyers as *Amici Curiae* in Support of Petitioners at 27-34, and the Brief of Petitioners at 48-51, 69-70.

For the foregoing reasons, Movants submit that the attached brief provides an important perspective on relevant issues that differs from that of the parties. Movants respectfully request that their motion for leave to file a brief as amici curiae be granted.

Respectfully submitted,

MARGARET E. WOODWARD*
610 Poydras Street, Suite 318
New Orleans, Louisiana 70130
(504) 525-9538

Counsel for Board of Regents of the State of Louisiana

W. SHELBY MCKENZIE*
NANCY C. DOUGHERTY
Taylor, Porter, Brooks & Phillips
451 Florida Boulevard
Baton Rouge, Louisiana 70801
(504) 387-3221

Counsel for Board of Supervisors of Louisiana State University and Agricultural and Mechanical College

JOHN N. KENNEDY*
Special Counsel to the Governor
Office of the Governor
4th Floor, State Capitol
P.O. Box 94004
Baton Rouge, Louisiana 70804
(504) 342-7015

JOSEPH J. LEVIN, JR.
JOHN M. FREEMAN
JOHANNA F. CHANIN
Colton and Boykin
1025 Thomas Jefferson St., N.W.
Suite 500 East
Washington, D.C. 20007
(202) 342-5400

Counsel for Governor Charles E. "Buddy" Roemer, III, Governor of the State of Louisiana

*Counsel of Record

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Nos. 90-1205, 90-6588

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA,
Petitioner

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *ET AL.*,
Respondents.

JAKE AYERS, SR., *ET AL.*,
Petitioners

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *ET AL.*,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

Brief Amici Curiae Of Charles E. "Buddy" Roemer, III, Governor Of The State Of Louisiana, Board Of Regents Of The State Of Louisiana, And Board Of Supervisors Of Louisiana State University And Agricultural And Mechanical College In Support Of Respondents

STATEMENT OF INTEREST

The State of Louisiana and its higher education boards[1] have been engaged in long-standing litigation with the United States (the

[1] The current four boards which direct public higher education in Louisiana are the Board of Regents ("Regents"), which has responsibility for the coordination of academic program development and the presentation of a unified budget to the State Legislature; the Board of Trustees for State Colleges and Universities ("Trustees"), (Footnote continued on next page)

"Government") which seeks judicial determination of the standard applicable to desegregation of higher education.

In 1974, the Government instituted a lawsuit against the State of Louisiana and the boards and agencies which then had responsibility for public higher education, alleging violations of Title VI of the Civil Rights Act of 1964 and the equal protection clause of the fourteenth amendment to the Constitution of the United States. In 1981, without any admission of liability, the parties entered into a Consent Decree which was approved by the United States District Court for the Eastern District of Louisiana. *See United States v. Louisiana*, 527 F. Supp. 509 (E.D. La. 1981).[2] By its terms, the Consent Decree-was to expire automatically on December 31, 1987, unless the Plaintiff (Government) timely filed a motion to determine whether the State's system of public higher education was being operated on a unitary basis. The Government so moved on December 29, 1987. Subsequently, motions for summary judgment were filed by the Government and by Regents. On August 2, 1988, the three-judge district court granted the Government's motion for partial summary judgment on the issue of liability. *See United States v. Louisiana*, 692 F. Supp. 642 (E.D. La. 1988). The district court then instructed the parties to submit proposed plans to desegregate public higher education in Louisiana and appointed a Special Master to consider and make recommendations regarding remedy. Minute Entry dated Oct. 7, 1988; Order dated Dec. 2, 1988.

(Footnote 1 continued)

which has management responsibility for nine institutions of higher education, eight of which are predominantly white and one of which, Grambling State University ("Grambling"), is predominantly black in their respective student body compositions; the Board of Supervisors of Southern University and Agricultural and Mechanical College ("Southern University"), which is a system consisting of three institutions, the student body composition of which is predominantly black; and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College ("LSU"), which is a system consisting of seven institutions, the student body composition of which is predominantly white.

[2] For the earlier history of the case, see *United States v. Louisiana*, 543 F.2d 1125 (5th Cir. 1976); *United States v. Louisiana*, 90 F.R.D. 358 (E.D. La. 1981), *aff'd*, 669 F.2d 314 (5th Cir. 1982).

On July 19, 1989, the three-judge district court adopted, with modifications, the Special Master's Final Report and Proposed Order. *See United States v. Louisiana*, 718 F. Supp. 499 (E.D. La. 1989). On September 18, 1989, the case was appealed to the United States Court of Appeals for the Fifth Circuit from the district court decisions pertaining to liability and remedy.[3] On August 29, 1990, the Fifth Circuit remanded the consolidated appeals to the district court for entry of further orders.

On October 30, 1990, the district court, reconsidering its previous decisions in light of the intervening decision in *Ayers v. Allain*, 914 F.2d 676 (5th Cir. 1990) (en banc), *cert. granted sub nom. Ayers v. Mabus*, ___ U.S. ___, 111 S.Ct. 1579 (1991) (consolidated with *United States v. Mabus*, ___ U.S. ___, 111 S.Ct. 1579 (1991)) ("*Ayers III*"), vacated its order of August 2, 1988, denied the Government's motion for summary judgment, and granted summary judgment in favor of all defendants. *See United States v. Louisiana*, 751 F. Supp. 606 (E.D. La. 1990). The Government's appeal of that judgment, the appeal of Southern University and various cross appeals are pending before the Fifth Circuit in consolidated Case Number 90-3874.[4] Thus, the Governor of Louisiana, Regents and LSU (hereinafter "Amici") have a direct and substantial interest in the issues presented to the Court in *Ayers III*.

The Louisiana litigation addresses issues of law substantially similar to those presently at bar. Through this brief, Amici urge the Court to adopt a standard for desegregation in higher education

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[3] Prior to that appeal, various parties took direct appeals of the three-judge district court's determinations to this Court. The Court stayed the enforcement of the district court's judgment and orders pending docketing of the appeals and disposition of the cases. *Southern University Board of Supervisors v. United States*, 492 U.S. 934 (1989); *Louisiana ex rel. William J. Guste, Attorney General of Louisiana v. United States*, 492 U.S. 934 (1989). On January 8, 1990, the Court entered orders, without opinion, that the direct appeals to it from the district court "are dismissed for want of jurisdiction." *Louisiana ex rel. William J. Guste, Attorney General of Louisiana v. United States*, ___ U.S. ___, 110 S.Ct. 708 (1990); *Board of Supervisors of Southern University and Agricultural and Mechanical College v. United States*, ___ U.S. ___, 110 S.Ct. 708 (1990); *Louisiana ex rel. Charles E. "Buddy" Roemer, III, Governor v. United States*, ___ U.S. ___, 110 S.Ct. 708 (1990).

[4] On May 6, 1991, the Fifth Circuit granted the Government's motion to stay the appellate proceedings in Case Number 90-3874 pending the disposition of *Ayers* before this Court.

appropriately based upon the reasoning advanced by this Court in *Bazemore v. Friday*, 478 U.S. 385 (1986), and by the Fifth Circuit in *Ayers III*. Additionally, under the 1981 Consent Decree, Louisiana gained valuable experience, at great cost, in what steps are unreasonable, impractical and educationally unsound in attempting to achieve greater racial mixture at Louisiana's predominantly black institutions. Amici submit that knowledge of this experience will prove helpful to the Court in determining the appropriate standard of liability. Furtheremore, Amici have access to information, not heretofore presented to the Court, concerning the development of the criteria issued by the former Department of Health, Education and Welfare ("HEW") discussed at length in the Brief *Amici Curiae* of Joseph A. Califano, Jr., Mary F. Berry, Ernest L. Boyer and David Tatel ("Califano Group") at 1-14, the Brief of the NAACP Legal Defense and Educational Fund, Inc., American Civil Liberties Union, and the National Conference of Black Lawyers as Amici Curiae in Support of Petitioners ("LDF Group") at 27-34, and the Brief of Petitioners at 48-51, 69-70.

SUMMARY OF ARGUMENT

Confusion over the legal standard applicable to desegregation of higher education has been and remains the norm. Issues of liability and remedy have been addressed by different courts in decidedly different ways. This confusion has hindered efforts to define clearly what constitutes liability and has often resulted in remedies that make little educational or desegregative sense.

It is undisputed that segregation of public institutions on the basis of race is unconstitutional. Consequently, states have an affirmative duty to dismantle *de jure* systems in the realm of both elementary and secondary as well as higher education. While the extent of a state's duty in this regard has been adjudicated on the elementary and secondary school levels in cases such as *Green v. County School Board*, 391 U.S. 340 (1968), it has not been determined by this Court in the context of higher education.

Courts which have considered the proper legal standard, regardless of their approach to liability and remedy, have recognized that the inherent differences between higher education and elementary and

secondary education require different standards for determining compliance with the constitutional mandate to desegregate. *See Bazemore v. Friday*, 478 U.S. 385 (1986); *Alabama State Teachers Ass'n v. Alabama Public School and College Authority*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd mem.*, 393 U.S. 400 (1969) ("*ASTA*"). Focusing on the significance of student choice in higher education, both the district court and the en banc Fifth Circuit recognized that *Bazemore*, *ASTA* and *Green* supply the appropriate standard for assessing Title VI and fourteenth amendment compliance in higher education. *Ayers III*, 914 F.2d 676; *Ayers v. Allain*, 674 F. Supp. 1523 (N.D. Miss. 1987) ("*Ayers I*"). *ASTA* and *Bazemore* are consistent with *Green* and indicate that in determining whether a unitary system exists, the Court should look beyond the racial composition of the institutions of higher learning and focus instead on the efforts to desegregate and the degree to which unfettered student choice exists and predominates. Thus, the appropriate inquiry into compliance is not the relative degree of integration of each institution, but instead, the actual contemporary factors contributing to the racial composition of the institutions.

Louisiana's attempts under the 1981 Consent Decree to affect enrollment patterns through costly programmatic and physical "enchancements" at predominantly black institutions proved to be an abysmal failure. *United States v. Louisiana*, 692 F. Supp. 642, 658 (E.D. La. 1988). The Louisiana experience provides convincing evidence that programmatic and capital enhancement of institutions of higher learning will not significantly alter the racial composition of those institutions and, therefore, failure to provide such enhancement cannot form the basis for liability.

Likewise, the criteria issued by the former Department of Health, Education and Welfare ("HEW") purporting to spell out the ingredients of Title VI compliance do not control Title VI litigation and should be given no weight whatsoever. Private petitioners, the Califano Group and the LDF Group, while conceding that the criteria are not rules having the force and effect of law, attempt to tie the criteria to the non-specific Title VI regulation, 34 C.F.R. Sec. 100.3(b)(6)(i), in such a way as to lend the criteria authority to which they are not otherwise entitled. There is absolutely no basis for the wooden application of criteria which were not developed in a serious manner and were never intended to have the effect of law.

ARGUMENT

I. THE CONSTITUTIONAL REQUIREMENT OF EQUAL PROTECTION MUST BE VIEWED DIFFERENTLY IN HIGHER EDUCATION AS CONTRASTED WITH PRIMARY AND SECONDARY EDUCATION.

A. The History Of Title VI Enforcement In Higher Education Is Important To The Analysis of Liability.

In 1978, during the height of the federal Title VI higher education enforcement effort, David A. Tatel, former director of HEW's Office of Civil Rights, described Title VI compliance as being achieved when "*enough* blacks [attend] the white schools and *enough* whites [attend] the black schools . . . ." Tatel, *HEW's Voice In College Crisis*, The Virginian-Pilot, The Ledger-Star, Dec. 10, 1978, C1, Col. 1 at C3 (emphasis added) (Appendix at 4a). Since that time, colleges and universities throughout the South have continued to receive similarly insightful direction from HEW's successor, the Department of Education, and from the Department of Justice.[5]

[5] In the Louisiana Title VI litigation, Government and Southern University witnesses have reasoned the appropriate other-race compositions to be, variously, 25%-30% white in the predominantly black institutions and 25%-30% black in the predominantly white institutions, Testimony of Clifton F. Conrad taken February 6, 1989 ("Conrad Testimony") at 303 (Appendix at 6a); 40% white in predominantly black Southern University in New Orleans, Deposition of Dr. Robert B. Gex taken February 16, 1989 ("Gex Deposition") at 20-21 (Appendix at 10a); 20%-30% white at predominantly black Southern University in Baton Rouge over fifteen to twenty years and minimum 15% black in predominantly white institutions, Deposition of Dr. Dolores R. Spikes taken February 28, 1989 ("Spikes Deposition") at 79-81 (Appendix at 16a).

The only documented effort by HEW and the Department of Education to spell out the ingredients of Title VI compliance was the issuance of criteria to be applied to the formerly *de jure Adams* states. *Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education*, 43 Fed. Reg. 6,658 (1978); *Amended Criteria Specifying Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education*, 42 Fed. Reg. 40,780 (1977) (hereinafter "Criteria"). The soundness of these Criteria, however, has not been approved by any court and the regulatory process by which they were developed was flawed. *See* discussion *infra* at 24-30.

Confusion over legal standards for Title VI compliance in higher education has plagued the Government, the higher education community and the courts. The major barrier to defining unitary higher education in the South has been the question of how to treat those institutions that were formerly all black and remain predominantly black.[6] Issues of liability and remedy have been addressed by different courts in decidedly different ways. *See, e.g., Geier v. Blanton*, 427 F. Supp. 644, 657 (M.D. Tenn. 1977), *aff'd sub nom. Geier v. University of Tennessee*, 597 F.2d 1056 (6th Cir.), *cert. denied*, 444 U.S. 886 (1979) (merger of proximately located predominantly black institution and predominantly white institution ordered); *Norris v. State Council of Higher Education*, 327 F. Supp. 1368 (E.D. Va.), *aff'd sub nom. Board of Visitors v. Norris*, 404 U.S. 907 (1971) (state enjoined from expanding from two to four years predominantly white institution located in geographic proximity to a four-year predominantly black institution); *ASTA*, 289 F. Supp. 784 (new four-year institution permitted to be established as branch of predominantly white institution in same community with predominantly black institution).[7]

[6] The Government has had its own problems in articulating its intentions toward predominantly black institutions:

> Well, Your Honor, there is no truth to the fact that we are trying to eliminate the black institutions. What we are trying to do is eliminate the identifiability as black institutions of the black institutions. . . .
>
> Your Honor, this is a difficult concept and we acknowledge that it's not an easy concept. . . .
>
> It's not an impossible concept though.

Mandel v. United States Dep't of Health, Educ. and Welfare, 411 F. Supp. 542, 553 (D. Md. 1976), *aff 'd by an equally divided Court sub nom. Mayor of Baltimore v. Mathews*, 571 F.2d 1273 (4th Cir. 1977), *cert. denied*, 439 U.S. 862 (1978). This same district court characterized the Government's conduct in its Title VI efforts against Maryland as "outrageous," "unreasonable," "startling," "perplexing," "duplicitous," "arbitrary," "cavalier," "uncooperative," "paradoxical," and "capricious." *Id.* at 548-63.

[7] *See also Artis v. Board of Regents*, No. CV 479-251, slip op. at 7 (S.D. Ga. Feb. 2, 1981) (Appendix at 23a) ("the fact that racial imbalances were originally created or promoted by official acts in the distant past does not mean that the continued existence of such imbalance is attributable to these official acts").

Perhaps the most glaring illustration of the inability of the Government, private plaintiffs and the judicial system to develop and apply educationally sound desegregation remedies in higher education can be found in the painful history of the Tennessee higher education desegregation litigation. The first order specifying injunctive relief in that litigation was entered by the United States District Court for the Middle District of Tennessee in 1968. *Sanders v. Ellington*, 288 F. Supp. 937 (M.D. Tenn. 1968). After numerous failed attempts to affect student choice, the district court in 1977 entered an order requiring the draconic "remedy" of merger as the last best hope for desegregation of those institutions. *Geier v. Blanton*, 427 F. Supp. 644 (M.D. Tenn. 1977). While merger did indeed eliminate the University of Tennessee at Nashville, a predominantly white institution, seven years later the court noted that Tennessee State University, the surviving institution, which had been and remained predominantly black, had steadily become resegregated. *Geier v. Alexander*, 593 F. Supp. 1263 (M.D. Tenn. 1984). Significantly, the court at that time also took judicial notice of the existence of strong support in the black community for maintaining Tennessee State University as a black institution. *Id.* at 1265. Indeed, the end of court supervision of Tennessee's higher education system is not yet in sight. More than twenty years after the initial lawsuit, the United States Court of Appeals for the Sixth Circuit still found itself bogged down in resolving issues springing from this mired litigation. *Geier v. Richardson*, 871 F.2d 1310 (6th Cir. 1989).[8]

[8] Ironically, Amicus Curiae State of Tennessee proudly champions the "effectiveness of [Tennessee's] court-ordered desegregation remedies," and claims that the "present effects of past *de jure* segregation have been eliminated" in its institutions of public higher education. *See* Amicus Curiae Brief of the State of Tennessee in Support of United States at 9. Despite these assertions, Dr. Wayne Brown, former Executive Director of the Tennessee Higher Education Commission, has testified that the Tennessee desegregation remedies were, in fact, failures. *See* Supplementary Report of Wayne Brown, dated January 30, 1989, at 4, 11 (Appendix at 28a, 33a). Asked to give an opinion as to whether the merger of the University of Tennessee at Nashville ("UTN") and Tennessee State University ("TSU") had been successful, Dr. Brown stated, "[i]n spite of the provision of the resources of both UTN and TSU, and in spite of special funding from the state, the 'new' TSU does not represent a successful merger. . . ." Report of Wayne Brown, dated May 11, 1988, at 10 (Appendix at 38a). Dr. Brown also noted that the "merged institution . . . lost significant enrollment," *see id.* at 6 (Appendix at 37a), and "has not achieved the racial goals anticipated by the court." *See id.* at 9 (Appendix at 38a).

(Footnote continued on next page)

Much of the confusion over the treatment to be accorded to predominantly black colleges and universities stems from *dicta* taken from the early rulings in the so-called *Adams* cases:

> "These Black institutions currently fulfill a crucial need and will continue to play an important role in Black higher education." The process of desegregation must not place a greater burden on Black institutions or Black students' opportunity to receive a quality public higher education.

Adams v. Califano, 430 F. Supp. 118, 120 (D.D.C. 1977) (quoting *Adams v. Richardson*, 480 F.2d 1159, 1165 (D.C. Cir. 1973)).[9] This protectionist language of the *Adams* cases has made the task of integration more difficult because it afforded the appearance of legitimacy to subsequent arguments that black institutions must be maintained to serve black students. As conceded by Clifton Conrad,

(Footnote 8 continued)

Moreover, when comparing black student enrollment at the flagship institutions of the eleven states of the Old Confederacy, Tennessee's flagship institution ranks a poor tenth in percentage of undergraduate black student population, and ninth in percentage of overall black student population. *See* 1988 Fall Enrollment, U.S. Department of Education, Integrated Post-Secondary Education Data (IPEDS) (University of South Carolina-Columbia (Undergraduate ("U") 13.95%; Overall ("OA") 12.35%); University of Alabama-Tuscaloosa (U: 9.49%; OA: 8.54%); University of Virginia-Charlottesville (U: 9.34%; OA: 7.60%); University of North Carolina-Chapel Hill (U: 8.98%; OA: 7.80%); Louisiana State University-Baton Rouge (U: 7.57%; OA: 7.08%); University of Florida (U: 6.65%; OA: 5.82%); University of Mississippi-Oxford (U: 6.33%; OA: 6.65%); University of Georgia (U: 5.15%; OA: 4.70%); University of Arkansas-Fayetteville (U: 5.15%; OA: 4.41%); University of Tennessee-Knoxville (U: 4.65%; OA: 4.52%); University of Texas-Austin (U: 4.10%; OA: 3.55%)).

[9] Despite the court's admonition that special circumstances must be afforded predominantly black institutions, as articulated in the *Adams* cases, that conclusion is certainly open to question if the very existence of predominantly black institutions constitutes a violation. Moreover, it must be remembered that the *Adams* cases involved, with one inconsequential exception, only the alleged failure of HEW to enforce Title VI. No former *de jure* states were parties in *Adams* and virtually none of the issues presented here was developed or debated in those cases. Indeed, no question of what constituted liability in higher education was ever considered. There was an assumption that liability existed and that remedies were required. The litigation was primarily characterized by its lack of adversity between the parties and, until 1984, the only serious controversy in the litigation involved the time frame for government enforcement efforts.

the Government's own expert in the Louisiana, Alabama and Mississippi Title VI litigation, the much more intractable problem in Louisiana (and elsewhere) in higher education desegregation is that of increasing white presence in predominantly black institutions, as opposed to increasing black presence in predominantly white institutions. Conrad Testimony at 313-14 (Appendix at 7a-8a).[10] Consequently, the most intractable problem has been made even more difficult to solve because some black administrators and others, relying heavily upon the protectionist language of *Adams*, have argued for the maintaining of predominantly black institutions, reasoning that only black institutions can educate black students.[11] One of the most emphatic arguments in this regard comes from Dr. Dolores R. Spikes, President of the Southern University System, who, in the Louisiana Title VI litigation offered testimony that:

> Historically, white colleges are not capable of addressing the needs of black students because whites are socially and culturally deprived of understanding the needs, desires, abilities, and mores of black students.

Statement of Dr. Dolores Spikes dated January 30, 1989 ("Spikes Statement") at 29 (Appendix at 42a).[12]

[10] The Government's attitude toward the integration of predominantly black institutions has only exacerbated the problem. The Criteria themselves were drafted with protection of the black colleges in mind. As Mr. Tatel commented in a 1979 interview:

> And we, under the direction of the court, have tried to draft these standards in a way that *protects black colleges*. And the *major part of them* requires the states to strengthen black colleges by giving them new programs and by giving them adequate funding [so that they can] compete with white institutions.

The MacNeil/Lehrer Report: Black Colleges, (PBS television broadcast, Apr. 10, 1979) (emphasis added) (Appendix at 40a). *See also* Criteria, 43 Fed. Reg. at 6,660; Testimony of Sheldon E. Steinbach, *infra* at 29-30.

[11] Indeed, the credit for the protectionist concept was originally given by the *Adams* court to the National Association of Equal Opportunity in Higher Education, an association of the presidents of 110 predominantly black colleges. *Adams v. Richardson*, 480 F.2d at 1165 n.11.

[12] To the extent this attitude suggests that predominantly white institutions in the South are inhospitable to black students, it is instructive to note the observation by Yale's distinguished historian, C. Vann Woodward, that, "[h]owever defined, by (Footnote continued on next page)

Similarly, in the Alabama Title VI litigation, Joe Reed, Chairman of the Alabama State University Board of Trustees, unflinchingly expressed that predominantly black institution's philosophy when he said, "There may be some redeeming value in *Plessy v. Ferguson* [163 U.S. 537 (1896)]." *See* Testimony of Joe Reed at 134, *Knight v. Alabama*, No. 83-M-1676-S (N.D. Ala. dated Feb. 12, 1991) (Appendix at 45a). In the Alabama litigation, the goal of maintaining the predominantly black institutions has translated into a demand that the "promise" of *Plessy v. Ferguson* be fulfilled, that predominantly black Alabama State University and Alabama A&M University be designated flagship institutions, and that they be transformed into counterparts of the predominantly white University of Alabama System and Auburn University. *See id.* at 135-36 (Appendix at 46a).

Thus, in the area of higher education and desegregation, the Government has demonstrated an unparalleled inability either to define what constitutes liability or to propose remedies that make educational or desegregative sense. The Government is no further along in 1991 in its clarity of thinking about these issues than it was in 1978 when Mr. Tatel offered that an appropriate standard would be achieved when enough blacks were in the predominantly white institutions and enough whites were in the predominantly black institutions. Indeed, the Government continues to add to the confusion. In the Alabama Title VI litigation, the Government took the position in 1985 that use of the ACT (which in Alabama is employed in conjunction with high school grades, *see United States v. Alabama*, 628 F. Supp. 1137, 1161, 1162, 1164 (N.D. Ala 1985), *rev'd*, 828 F.2d 1532 (11th Cir. 1987)) for admission purposes, did not constitute a violation of Title VI. *See* Trial Transcript at 5331, *United States v. Alabama*, No. 83-P-1676-S (N.D. Ala. dated July 27, 1985) (Appendix at 47a-48a). Nathaniel Douglas, Chief of the Justice Department's Civil Rights Division, Educational Opportunities Litigation Section, made the Government's position explicit:

(Footnote 12 continued)

far the greater number of racial incidents occurs at northern universities, with Massachusetts leading them all." Woodward, *Freedom & the Universities*, The New York Review Of Books, July 18, 1991 at 32, 35 (Appendix at 43a). If there is a problem, it is one that is national in scope and unrelated to the era of *de jure* segregation.

> Your Honor, if I can make the record clear, the government is not challenging the use of the ACT as part of the admissions process. We concede that point.

Id. (Appendix at 48a).

In 1991, however, the Government inexplicably reversed itself, asserting at retrial that Alabama's use of the ACT, even in conjunction with high school grades, should be enjoined. *See* Proposed Findings Of Facts And Conclusions Of Law Submitted by the United States, *Knight v. Alabama*, No. 83-M-1676-S (N.D. Ala. dated June 5, 1991). More specifically, the Government contends that:

> The circumstances surrounding the adoption of the ACT admissions policy, therefore, leads [sic] one to the inescapable conclusion that the desire to exclude blacks from historically white institutions and to thereby preserve the historical racial character of those institutions was a motivating factor in the policy's adoption and implementation. . . .

Id. at 38 (Appendix at 49a). Here, however, the Government attacks "Mississippi's exclusive reliance on ACT scores" as "lack[ing] a legitimate educational justification," but implies it would approve the ACT, if used in conjunction with high school grades: "the use of grades in conjunction with ACT scores provides more accurate predictions of college performance." *See* Brief for the United States at 36. Mississippi, suggests the Government, "could remove this remnant . . . without significant difficulty," particularly since "[m]ost other States use high school grades and other criteria in conjunction with ACT to determine college admissions." *See id.* at 37. Thus, the Government, having established two different positions on this issue, now misleadingly implies approval of an admissions practice it recently attacked in the Alabama litigation and would no doubt view unfavorably in Mississippi because of "[t]he circumstances surrounding [its] adoption."[13]

[13] Additionally, seemingly dissatisfied with the treatment accorded the term "vestiges," the Government now seeks to replace the word with "remnants." *See* Brief for the United States at 27 n.27.

The Government's current focus on the use of the ACT for admissions purposes is misplaced. Even in systems in which open admissions existed, the Government has been dissatisfied with the desegregative results. Indeed, in the Louisiana litigation, the three-judge district court recognized that Louisiana's open admissions practice was "counter-productive, both in terms of educational objectives and racial integration." *United States v. Louisiana*, 718 F. Supp. 499, 510 (E.D. La. 1989), *vacated*, 751 F. Supp. 606 (E.D. La. 1990). Adopting the Special Master's recommendation in its Remedial Order, the district court directed an end to the open admissions system and ordered the implementation of selective admissions requirements. *Id.* at 517. The district court also recognized that the "ACT and other standardized test scores provide valuable data." *Id.*

In contrast with the Government, private plaintiffs and the predominantly black institutions have been much more consistent and straightforward in their theory of these Title VI cases. While giving lip service to desegregation, they have made it abundantly clear that they wish to maintain their black identity by recruiting more black students into institutions that, through "enhancement," will have a greater variety of academic programs and newer facilities. This view of the mission of predominantly black institutions is merely another form of separatism, which cannot be constitutionally condoned in state-supported higher education.[14] By attributing some higher purpose to "remedies" that glorify the value of intentionally maintaining separate institutions as bastions of black higher education, proponents of this view seek to justify what the Fifth Circuit correctly characterized as the "revolting principle" of "designat[ing]. . . Black Schools for black students, [which] shall at all times remain equal in funding, offerings, and facilities with their counterparts designated as White Schools." *See Ayers III*, 914 F.2d at 692.

[14] Should black students freely choose to attend predominantly black institutions, uninfluenced by an organized campaign toward that end by public officials, then Amici would agree that no Title VI or constitutional violation exists. *See* discussion *infra* at 18-19.

B. The Standard Of Title VI And Fourteenth Amendment Liability Adopted By The Fifth Circuit Is Correct.

It is well-settled law that segregation of public institutions on the basis of race is unconstitutional. *See Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954). Further, "separate-but-equal" educational institutions do not satisfy the constitutional requirement of equal protection found in the fourteenth amendment. *See id.*; U.S Const. amend. XIV. Consequently, policies and practices adopted by the states must be racially non-discriminatory in both elementary and secondary as well as higher education.[15] Those states that have previously maintained racially dual educational systems have the affirmative duty to eliminate all vestiges of the *de jure* era segregation.[16] The operation of a "unitary system'' satisfies this duty.[17]

Amici do not claim that *ASTA*, *Bazemore* and *Ayers III*, which distinguish higher education from elementary and secondary education, limit the duty to eliminate vestiges of *de jure* segregation. Unquestionably, all educational programs have both a constitutional duty and a statutory incentive to desegregate. However, a major issue to be decided in this case is the nature and scope of that duty. The differences between higher education and elementary and secondary education relate to more than the means by which vestiges shall be removed; the differences relate as well to the determination of liability. *See Ayers III*, 676 F.2d at 682-83, 687.

1. The Existence Of Racially Identifiable Higher Education Institutions Is Not Inconsistent With The Goal Of A Unitary System.

This Court has instructed that, in determining the extent to which a state has dismantled its formerly *de jure* system, the issue should be assessed "in light of the circumstances present and the options avail-

[15] *See Florida, ex rel. Hawkins v. Board of Control*, 350 U.S. 413, 414, *reh'g denied*, 351 U.S. 915 (1956) (black applicant entitled to prompt admission to graduate program under rules and regulations applicable to other qualified applicants); *see also* 42 U.S.C. Section 2000d, 2000d-1 (1982).

[16] *Milliken v. Bradley*, 433 U.S. 267, 289-90 (1977) (quoting *Swann v. Charlotte-Mecklenburg Board of Educ.*, 402 U.S. 1, 15 (1971)).

[17] *See generally Swann*, 402 U.S. 1 (1971); *Green v. County School Board*, 391 U.S. 430 (1968); *Brown*, 347 U.S. 483 (1954).

able in each instance." *Green v. County School Board*, 391 U.S. 430, 439 (1968). In the higher education context, judicial intervention may not be appropriate in circumstances that might otherwise call for such intervention in the elementary and secondary education setting. *ASTA*, 289 F. Supp. at 787-88. In support of this distinction, the *ASTA* court stated that unlike elementary and secondary schools, in higher education, students choose which institution they will attend, if any; and that choice involves a broad array of considerations not relevant on the elementary and secondary levels. *Id.* at 788. Because of these factors, the court in *ASTA* was concerned that judicial intervention in higher education would involve the court in "a wide range of educational policy decisions in which the courts should not become involved." *Id.* Therefore, the court held that the "*scope* of the [affirmative duty to dismantle the dual system] should [not] be extended as far in higher education as it has been in the elementary and secondary public schools area." *Id.* at 787 (emphasis in original). Rather, the court held that to the extent that a dual school system, on the college level, may be based on racial considerations, the affirmative duty to dismantle such a system is satisfied if the state and particular institutions are dealing with faculty, staff and admissions in good faith. *Id.* at 789-790.

Consequently, in the higher education setting, a court should look beyond the numbers and percentages of other-race attendance to the actual contemporary factors contributing to the racial composition of the institutions. This was precisely the approach taken by the district court and the en banc Fifth Circuit in the instant action.

2. *ASTA*, *Bazemore* And *Green* Supply The Appropriate Standard For Assessing Title VI And Fourteenth Amendment Compliance In Higher Education.

The Fifth Circuit in the action below properly defined the appropriate standard for determining compliance with Title VI:

> the state . . . satisfies its constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures. [Footnote omitted]

Ayers III, 676 F.2d at 687.[18] The Fifth Circuit found that the record made clear that "Mississippi has adopted and implemented race neutral policies for operating its colleges and universities and that all students have real freedom of choice to attend the college or university they wish." *Ayers III*, 676 F.2d at 678. With this emphasis on student choice in the higher education context, the Fifth Circuit reasoned that *Green* stood in harmony with *Bazemore* and *ASTA*. *See id.* at 685.

a. Higher Education Is Not Comparable To Elementary And Secondary Education.

Critical to the Supreme Court's decision in *Green* was its finding that, despite a freedom of choice plan, the two schools in question were still identifiably black and identifiably white. As discussed above, while racial mix may be an appropriate standard for assessing elementary and secondary school Title VI or fourteenth amendment violations, racial composition alone, in the higher education context, cannot properly form the basis for such liability.

The inherent differences between these two levels of educational institutions require different standards for determining compliance with the constitutional mandate to desegregate. Attendance at public elementary and secondary schools is compulsory. Students attend free of tuition and academic programs are, by and large, fungible.[19] States

[18] Similarly, the district court found that:

> . . . the scope of the affirmative duty to disestablish a former *de jure* segregated system of education is to be defined in accordance with the degree of choice individuals enjoy as to whether they wish to attend college at all and, if so, which one.

Ayers I, 674 F. Supp. 1523, 1553 (N.D. Miss. 1987).

[19] Elementary and secondary schools in a single district tend to be fungible in the sense that they generally strive towards uniformity in offerings, facilities and services. The opposite is true in higher education. A special emphasis is placed upon the relative uniqueness of the separate institutions comprising a public system of higher education. Indeed, the uniqueness of institutions which results from the confluence of course offerings, services, size, location, faculty and students found at each institution, explains why freedom of choice is so valued and why the courts have not required the restriction of student choice in higher education.

Ayers I, 674 F. Supp. at 1554.

maintain control over public elementary and secondary schools by empowering school boards to create school attendance areas and "otherwise [to] designate the school that particular students may attend." *Bazemore*, 478 U.S. at 408 (White, J., concurring). Desegregation in that context, therefore, is merely a function of whether the buses roll. Such control is not available in public higher education where attendance is voluntary, tuition is charged and programs are diverse. *Ayers III*, 914 F.2d at 687; *see also Ayers I*, 674 F. Supp. at 1554.

The circumstances in higher education are inherently and fundamentally different from those in elementary and secondary education because student choice is such an integral factor. As early as 1969, in *ASTA*, this Court implicitly acknowledged this distinction by affirming the district court's decision which recognized the effect of student choice in higher education. *See ASTA*, 289 F.Supp. 784, *aff'd mem.*, 393 U.S. 400 (1969). The lower court observed:

> [p]ublic elementary and secondary schools are traditionally free and compulsory. . . . Higher education is neither free nor compulsory. Students choose which, if any, institution they will attend. In making that choice they face the full range of diversity in goals, facilities, equipment, course offerings, teacher training and salaries, and living arrangements, perhaps only to mention a few.

289 F. Supp. at 787-788.

As the *ASTA* court made clear, higher education requires the element of free choice to assure the best match between student and school. Unlike elementary school and high school, college is and must be a matter of choice for its students. This fundamental distinction is critical when evaluating desegregation in higher education.

b. The Significance Of Choice In The Higher Education Setting Compels The Application Of A Different Standard For Determining Title VI And Fourteenth Amendment Compliance.

The significance of choice in determining Title VI and fourteenth amendment compliance was the focus of the *Bazemore* and *ASTA* cases. In *Bazemore*, five Justices observed that because the 4-H and Homemaker Clubs at issue had discontinued their segregated club policy, whatever racial imbalance existed after that time was, "the result of wholly voluntary and unfettered choice of private individuals." 478 U.S. at 407 (White, J., concurring). The Justices stated that no Title VI or fourteenth amendment violation could be found where the clubs had discontinued their prior discriminatory practices and adopted a wholly neutral admissions policy (which policy was disseminated through club leaders and the media). *Id.* at 408. "The mere continued existence of single-race clubs does not make a constitutional violation . . . [where] one's choice of a Club is entirely voluntary." *Id.*

Similarly, the courts in *ASTA* and *Ayers I* held that the existence of racially identifiable colleges is not dispositive as to whether the state and the institution have discharged their duties under Title VI and the fourteenth amendment. Rather, as the *ASTA* court reasoned:

> [A]s long as the State and the particular institution are dealing with admissions, faculty and staff in good faith, the basic requirement of the affirmative duty to dismantle the dual system on the college level, to the extent that the system may be based upon racial consideration, is satisfied.

289 F. Supp. at 789-90.[20]

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[20] *See also Board of Educ. of Oklahoma City Public Schools v. Dowell*, ___ U.S. ___, 111 S.Ct. 630, 638 (1991) ("The District Court should address itself to whether the Board had complied in good faith with the desegregation decree, . . . and whether the vestiges of past discrimination had been eliminated to the extent practicable."); *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 531 n.5 (1979) ("[r]acial imbalance . . . is not per se a constitutional violation"); *Washington v. Davis*, 426 U.S. 229, 240 (1976) ("[t]hat there are both predominantly black and predominantly white schools

(Footnote continued on next page)

Likewise, in *Ayers III*, the court stressed that the State of Mississippi's obligation in disestablishing a former *de jure* system does not include limiting student choice. *Ayers III*, 914 F.2d at 687. The court found that Mississippi's institutions of higher learning were predominantly black or predominantly white because students had exercised unfettered choice in selecting which institution to attend. *Id.* at 678, 692. *See also Ayers I*, 674 F. Supp. at 1558. Thus, it is implicit that the racial composition itself is not evidence of a violation of Title VI or the fourteenth amendment. This is particularly so where a state and its institutions have employed numerous measures to eliminate the vestiges of *de jure* segregation.[21] Accordingly, this Court should not be persuaded that the existence of racially identifiable institutions evinces vestiges of the former system.

As *ASTA*, *Bazemore*, and *Ayers III* make clear, the determination of whether desegregation has been achieved in the higher education setting is to be based on the state's efforts to desegregate and the unfettered freedom of students to attend the institution of their choice. This is the proper measure of a state's success in meeting the goal of a unitary system and the appropriate inquiry for determining a state's compliance with Title VI and the fourteenth amendment. An inflexible application of *Green* to determine Title VI and fourteenth amendment compliance simply fails to account for the crucial differences between elementary and secondary schools and higher education.

This is the analysis set forth in both the district court opinion and the en banc Fifth Circuit opinion. That analysis and application of *Bazemore* to the instant facts was proper and should be affirmed.

(Footnote 20 continued)

in a community is not alone violative of the Equal Protection Clause. The essential element of *de jure* segregation is 'a current condition of segregation resulting from intentional state action'" (quoting *Keyes v. School Dist. No. 1*, 413 U.S. 189, 205 (1973)); *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424, 434 (1976) (substantive constitutional right to a particular degree of racial balance or mixing is disapproved).

[21] *See Ayers I*, 674 F. Supp. at 1558 (after holding that the racial composition of Mississippi schools was the result of student choice, the court went on to find that, ". . . defendants have used every reasonable means at their disposal in their recruitment efforts. Defendants' efforts . . . satisfy their affirmative duty to dismantle the former segregated system insofar as the duty pertains to student enrollment.").

II. INCREASED ENHANCEMENT OF PREDOMINANTLY BLACK INSTITUTIONS WILL NOT SIGNIFICANTLY ALTER THE RACIAL COMPOSITION OF INSTITUTIONS OF HIGHER LEARNING.

A. Failure To Effect Enhancement Of Predominantly Black Institutions As Indicia Of Liability Is A Return To The Era Of Separate-But-Equal And Should Be Rejected.

Throughout the vacated panel decision in *Ayers v. Allain*, 893 F.2d 732 (5th Cir. 1990) ("*Ayers II*"), the majority refers to a purported under-enhancement of predominantly black institutions as compared to predominantly white institutions. *Ayers II*, 893 F.2d at 736-44, 752-53. Implicit in the majority's discussion is the notion that failure to effect certain enhancement gives rise to liability under Title VI and the fourteenth amendment. *Id.* at 752-54. Such a position, if implemented, would result in the creation of "separate-but-equal" institutions, which the law abjures. In *United States v. Louisiana*, 692 F. Supp. 642 (E.D. La. 1988), the three-judge district court condemned the enhancement approach as coming "treacherously close to a mandate of the 'separate but equal' doctrine which has been emphatically rejected ever since *Brown I*." *Id.* at 657. This enhancement theory has been similarly rejected by Judge Allgood's concurrence in *United States v. Alabama*, 791 F.2d 1450, 1460 (11th Cir. 1986) (Allgood, J., concurring) (rejecting the proposition that predominantly black institutions have a right to "preferential treatment or status as vicarious victims of prior discrimination"), and by the Fifth Circuit in *Ayers III*, 914 F.2d at 692 (characterizing designation of "Black Schools" for black students as a "revolting principle").

The enhancement theory resurrects the "separate-but-equal" doctrine and has been soundly criticized in those states where it has been aired. Packaging enhancement as a mechanism for attracting white students to predominantly black institutions cannot circumvent the problem. Moreover, this attempt to justify enhancement of predominantly black institutions as a desegregative device is contradicted by the empirical results of the Louisiana experience.

B. Louisiana's Enhancement Funding of Predominantly Black Institutions Pursuant To The 1981 Consent Decree Failed To Increase Significantly White Enrollment In Those Institutions.

In 1981, the Louisiana litigants, without conceding liability, sought a solution to further desegregation through a negotiated Consent Decree approved by the district court in September of that year. *United States v. Louisiana*, 527 F. Supp. 509 (E.D. La. 1981). The Consent Decree was premised on the hope that programmatic and physical enhancements at predominantly black institutions would significantly affect enrollment patterns. Not only did the Louisiana enhancements fail to attract a significant number of white students to predominantly black institutions, the enhancements may have influenced the decision of a higher percentage of black students to attend predominantly black rather than predominantly white institutions.[22]

In short, the Consent Decree proved to be an abysmal failure. *United States v. Louisiana*, 692 F. Supp. at 658. During the life of the Consent Decree, 1981-87, the three-judge district court found that the percentage of black students enrolled at predominantly white institutions actually had declined from 55% to 47% of the black students enrolled at institutions of public higher education in Louisiana. *Id.* at 645.[23] On the other hand, black institutions showed only a negligible increase in white enrollment from approximately 0.3% of all white

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[22] Even the Government, at long last, seems to recognize the futility of "enhancement" as a desegregative tool. *See* Brief for the United States at 32. Indeed, the Government concedes that "'improved' duplication might well have the perverse effect of encouraging students to attend a school where, other things now being more nearly equal, their own race predominates." *Id.*

[23] Although overall black student enrollment as a percent of in-state and out-of-state enrollees declined, over 55% of Louisiana in-state black students enrolled in predominantly white institutions. *See* 1988 Fall Enrollment, U.S. Department of Education, Integrated Post-Secondary Education Data (IPEDS). In Alabama, almost 60% of black high school graduates who enroll in public higher education enroll in predominantly white institutions. Hearing Testimony of Edward Rutledge, Director of Information and Physical Systems, Alabama Commission on Higher Education, at 194-96, *Knight v. Alabama*, No. 83-M-1676-S (N.D. Ala. dated May 3, 1990) (Appendix at 50a).

students enrolled in 1981 to approximately 1.1% of all white students enrolled in 1987. *United States v. Louisiana*, 692 F. Supp. at 645.

Higher education in Louisiana is funded pursuant to a formula based on various objective criteria and applied with mathematical objectivity to all institutions. Direct Testimony of Marvin Roubique ("Roubique Statement") at 1-3 (Appendix at 51a-53a).[24] Pursuant to the 1981 Consent Decree, however, funding for predominantly black institutions and their programs was provided over and above this formula.[25] Despite this overall funding enhancement and despite the addition of sixty new academic programs[26] at the predominantly black institutions at a cost of $65,000,000 (Direct Testimony of Kerry Davidson ("Davidson Statement") at 1 (Appendix at 80a); Roubique Statement at 4 (Appendix at 53a)), an appropriation of over $50,000,000 for capital outlay (Direct Testimony of Douglas Rewerts ("Rewerts Statement") at 1 (Appendix at 83a)), and the implementation of other enhancement measures such as faculty development programs, white enrollment as of 1988 in the predominantly black institutions had increased by less than 1%.[27] *United States v. Louisiana*, 692 F. Supp. at 645. Of the sixty new academic programs implemented at the predominantly black institutions pursuant to the Consent Decree, only four had enrolled white students in any noticeable number. Direct Testimony of Larry Tremblay ("Tremblay Statement") at 3 (Appendix at 87a-88a). Put another way, in terms of desegregative effect, there had been fifteen program failures for each

[24] Unless otherwise indicated, all further citations to direct testimony, statements and reports refer to those witness reports and affidavits submitted by the parties in the Louisiana Title VI litigation to the Special Master on February 1, 1989.

[25] For example, in the academic year 1987-1988, Consent Decree programs were funded 39.2% in excess of formula funding. Report of Lucie Lapovsky dated July 1988 ("Lapovsky Report") at 22 (Appendix at 72a). *See* Roubique Statement at 5-7 (Appendix at 54a-56a).

[26] Of the sixty-two new academic programs that were to be implemented at the predominantly black institutions pursuant to the Consent Decree, all but two were actually funded and implemented. *See* Trial Transcript of Dr. James H. Wharton ("Wharton Transcript") at 100, *Knight v. Alabama*, No. 83-M-1676-S (N.D. Ala. dated Apr. 2, 1991) (Appendix at 76a).

[27] All funding and enrollment figures are "as of" 1988 when they were submitted as part of the trial record in *United States v. Louisiana*, 692 F. Supp. at 642.

"success." Overall, black students accounted for 87% of the enrollment in the Consent Decree programs. Excluding the programs mentioned above, enrollment in Consent Decree programs was 93% black. This is a particularly poor showing for those programs theoretically selected, designed, and implemented specifically for the purpose of attracting white students.

The following specific examples of the failure of enhancements to attract white students to predominantly black institutions are instructive and clearly dispel the notion that institutional enhancement to accomplish desegregative objectives provides a solution. The bachelor of science degree in environmental chemistry at Southern University-Baton Rouge (a predominantly black institution) received $1,350,444 in supplemental funding and after five years of funding had a total of five students enrolled, none of whom was white. The bachelor of science degree in urban studies at Southern University-New Orleans had received $409,970 in funding and had enrolled six students, none of whom was white. At Grambling State University, of five of nine Consent Decree programs implemented with supplemental funding exceeding $5,000,000, not a single white student was enrolled.[28] At Southern University-Shreveport/Bossier, a predominantly black institution, in eleven of fifteen Consent Decree programs, not a single white student was enrolled.[29]

Even after Consent Decree academic program expenditures of more than $75,000,000 over seven years, exactly 211 white students had enrolled in Consent Decree programs. Tremblay Statement at 2-4 (Appendix at 86a-88a). Thus, excluding capital outlay, as of 1988, Louisiana had spent approximately $355,450 to attract each individual white student to a predominantly black institution. *See* Wharton Transcript at 105 (Appendix at 78a-79a).

Naturally, the facts and figures that define Louisiana's experience are different from the facts and figures in Mississippi. Yet, the Louisiana experience provides convincing evidence that programmatic and capital enhancement of institutions of higher learning will

[28] Taking all nine programs together, white enrollment was only 15.72%. Tremblay Statement at 3 (Appendix at 87a-88a).

[29] Taking all fifteen programs together, white enrollment was only 9.58%. *Id.* at 4 (Appendix at 88a).

not significantly alter the racial composition of those institutions and, therefore, failure to provide such enhancement cannot form the basis for liability, while its provision may indeed result in resegregation.

III. THE CRITERIA ARE UNWORKABLE, PROCEDURALLY FLAWED AND CANNOT BE THE BASIS FOR A FINDING OF LIABILITY.

The private plaintiffs contend that respondents have not fulfilled the obligations imposed upon them by Title VI and its implementing regulations. More specifically, the private plaintiffs have set forth for review the separate question of "[w]hether the court of appeals erred by failing to apply a Title VI regulation [34 C.F.R. 100.3(b)(6)(i)] addressing defendants' remedial obligation . . . in a manner consistent with administrative standards [the Criteria][30] . . . ." Private petitioners, the Califano Group and the LDF Group place considerably more significance on the Criteria than is warranted.[31] As is made clear below, the soundness of the Criteria has not been approved by any court and the regulatory process by which they were developed was procedurally flawed. The Criteria are merely instructions, not rules, and failure to adhere to the Criteria cannot be the basis for a finding of liability. Thus, these Criteria should not be binding on this or any other Court and, especially in light of their checkered past, should not be given any weight in Title VI litigation.

A. The Revised Criteria Are Merely Guidelines And Not Rules.

The Criteria, by all accounts, were intended as guidelines for the development of plans for the desegregation of formerly *de jure* state

[30] *See* complete citation, *supra* at 6 n.5.

[31] The Califano Group and the LDF Group do, however, concede that the Criteria are not rules and the Government relegates its discussion of the Criteria to a footnote on the final page of its brief. *See* Brief for the United States at 43 n.41.

Moreover, in its decision below, the en banc Fifth Circuit correctly recognized that it was unnecessary to discuss the scope of Mississippi's duty under 34 C.F.R. Sec. 100.3(b)(6)(i), to which the Criteria relate. *See Ayers III*, 914 F.2d at 687-88 n.11. The "affirmative action" regulation cited by private petitioners is virtually identical to 7 C.F.R. Sec. 15.3(b)(6)(i), upon which the *Bazemore* plaintiffs unsuccessfully relied. *Compare* 34 C.F.R. Sec. 100.3(b)(6)(i) (1989) *with* 7 C.F.R. Sec. 15.3(b)(6)(i) (1985). The Fifth Circuit correctly concluded, therefore, "that the duty outlined by the Supreme Court in *Bazemore* controls in Title VI cases," not the regulations. *Ayers III*, 914 F.2d at 687-88 n.11.

systems of public higher education.[32] Because the Criteria were never intended to be rules, the Government made no effort to comply with the rule-making procedures of the Administrative Procedure Act, ch. 324, 50 Stat. 237 (1947) (codified as amended at 5 U.S.C.A. Section 551 *et seq.* (1977 & Supp. 1989) ("APA").[33] Moreover, a blue ribbon panel formed to comment on and criticize the Criteria[34] was not conducted in accordance with the Federal Advisory Committee Act, 86 Stat. 770 (1976), as amended, 90 Stat. 1247, 91 Stat. 1634 (1980), 94 Stat. 3040, 96 Stat. 1822 (1982) (codified as amended at 5 U.S.C.A. App. 2 (1967 & Supp. 1989) ("FACA").[35]

[32] Preamble to Criteria, 43 Fed. Reg. at 6,659 ("the Court ordered HEW to develop and issue within 90 days specific criteria to guide the six States [Arkansas, Florida, Georgia, North Carolina, Oklahoma and Virginia] in the preparation of revised desegregation plans").

[33] The Criteria were not published in the *Federal Register* for comment; the Criteria appeared in the *Federal Register* as issued by HEW, without any expectation or solicitation of public comment. HEW held no public hearings on the Criteria, but rather the Criteria were the result of "consultations" between HEW and "interested" outside parties. *See* 42 Fed. Reg. 40,782 (July 5, 1977).

[34] Although both the Preamble to Criteria and the Califano Group reference "two panels of nationally recognized educators" which advised an interdepartmental task force, *see* 43 Fed. Reg. at 6,661; Brief *Amici Curiae* of Califano Group at 7, the only evidence concerning any advisory panel is that which was developed in *In re North Carolina*, HEW Docket 79-VI-1 (filed Apr. 2, 1979). In that proceeding, the sole external panel referenced was the so-called "Blue Ribbon Panel," a description coined by HEW and employed, for example, by Peter Libassi, the General Counsel of HEW who directed the work on the Criteria. *See* Hearing Testimony of Harold Howe, II, ("Howe Testimony") at 2787-88, *In re North Carolina*, HEW Docket 79-VI-7 (dated Aug. 13, 1980) (Appendix at 93a).

[35] The blue ribbon panel meets the definition of an "advisory committee" under the FACA because it was a panel "established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government . . . ." 5 U.S.C.A. App. I, section 3(2) (subsequently amended on December 21, 1982, and now 5 U.S.C.A. App. 2, section 3(2)). As an advisory committee, the panel failed to meet the requirements of the FACA. There is no record that the public was informed of the advisory committee activities and that the committee itself was aware of views held by members of the public. *See* 5 U.S.C.A. App. I, section 9-10 (subsequently amended on Dec. 21, 1982, and now 5 U.S.C.A. App. 2, sections 9-10).

(Footnote continued on next page)

While there is no contention that the Criteria are rules, the private petitioners, the Califano Group and the LDF Group attempt to tie the Criteria to the non-specific Title VI regulation, 34 C.F.R. Sec. 100.3(b)(6)(i), in such a way so as to lend the Criteria authority to which they are not otherwise entitled.[36] The Criteria were not developed in a serious manner and were never intended to have the effect of law. Thus, attempts to bootstrap the Criteria to the regulation must fail.

"The basic policy of [5 U.S.C. Sec. 553] at least requires that when a proposed regulation of general applicability has substantial impact . . ., notice and opportunity for comment should first be provided." *Pharmaceutical Mfrs. Ass'n v. Finch*, 307 F. Supp. 858, 863 (D. Del. 1970). The Criteria, if given the status suggested by private plaintiffs and the Califano and LDF Groups, would have substantial impact because they affect states' rights and obligations

(Footnote 35 continued)

Internal memoranda of HEW indicate that the HEW developers of the Criteria sought to avoid the requirements of the FACA. Richard Cotton, an aide to Peter Libassi, the General Counsel of HEW who directed the work on the Criteria, wrote in an April 1977 memorandum attaching a proposed list of panel members, "if we meet with these people once or twice, can we avoid the Federal Advisory Committee Act?" *See* Memorandum from Richard Cotton to Peter Libassi, dated Apr. 11, 1977 (Appendix at 95a-96a). In the absence of compliance with FACA, the blue ribbon panel's influence on the Criteria resulted in prejudice to affected states because they were not provided an opportunity to render their views to the panel, nor were they able to obtain any knowledge of the panel's views.

[36] In this regard, the private petitioners and the LDF Group reference *Lau v. Nichols*, 414 U.S. 563 (1974). Their reliance on *Lau* is misplaced. *Lau* addressed the problem of English language deficiency in Chinese speaking elementary and secondary school children. As Justice Douglas noted, "[i]t seems obvious" that the failure to teach English to non-English speaking Chinese Americans "denie[d] them a meaningful opportunity to participate in the educational program . . . ." *Id.* at 568. Nothing about defining the legal standard applicable to desegregation of higher education is obvious.

Moreover, the *Lau* guidelines were clear and uncomplicated, filling fewer than two full columns, covering less than one page of the Federal Register and consisting of only ten paragraphs. *See Identification Of Discrimination And Denial Of Services On The Basis Of National Origin*, 35 Fed. Reg. 11,595 (1970). In stark contrast, the Revised Criteria are set forth in seventeen columns, cover nearly six full pages of the Federal Register and consist of 106 paragraphs. *See* 42 Fed. Reg. 6,658.

relating to Title VI compliance and endanger the flow of federal money critical to the existence of state universities. The Criteria, if so interpreted, must comport with the rule-making requirements of the APA. *See Pickus v. U.S. Board of Parole*, 507 F.2d 1107, 1114 (D.C. Cir. 1974) (parole board guidelines affecting substantive rights of persons were not general statements of policy and, consequently, were stricken for failing to be promulgated in accordance with APA).

Courts that have considered the effect of the Criteria have declined to bind states and the Government to them. When faced with the issue of the Criteria's application to proposed desegregation plans, the United States District Court for the Eastern District of North Carolina found that Judge Pratt had neither adopted the Criteria nor held that they have the force or effect of law. *See North Carolina v. Dept. of Health, Education & Welfare*, 480 F. Supp. 929, 932 n.1 (E.D. N.C. 1979).

Moreover, the United States Court of Appeals for the District of Columbia has held:

> When the court ordered the Department [HEW] to enforce [Title VI] in 1973, it did not purport to dictate a fixed formula for choosing among these modes of implementation, *i.e.*, it did not dictate specific compliance criteria but left the choice among lawful criteria to the discretion of the Department and of the states. [Footnote omitted] Similarly, the particular terms of the amended criteria issued by the Department pursuant to the 1977 District of Columbia District Court order were never endorsed or compelled by the district court [footnote omitted]; and indeed have been subsequently revoked by the Department. [Footnote omitted] Thus, the point of his various court orders, as Judge Pratt explained, was not to specify what the final results of enforcement would be in every detail, nor to decree unalterable requirements for compliance with Title VI, but rather to have the Department initiate the process of enforcement, the process of which the specifics of compliance would then be determined. [Footnote omitted]

Adams v. Bell, 711 F.2d 161, 165-166 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1021 (1984). Thus, the federal courts that have considered

the significance of the Criteria have confirmed their purpose as mere guidelines. The Criteria serve as guidelines to the development of desegregation plans; they do not impose "unalterable requirements" which can be converted into a standard of liability under Title VI and the fourteenth amendment.[37]

B. The Origins Of The Criteria Are Suspect.

In determining the weight to be accorded the Criteria, the Court should also consider their questionable genesis. In addition to HEW's efforts to shield the development of the Criteria from public view, *see* footnote 35, *supra* at 25-26, testimony in a prior higher education desegregation case discloses that the so-called "blue ribbon panel" organized by HEW to comment on the Criteria was a mere formality and little, if any, substantive work was actually performed by the panel. A member of that panel, Harold Howe, II, a former United States Commissioner for Education, and at the time of the panel a vice-president of the Ford Foundation, testified just three years after the panel was convened that he had no recollection of what occurred during the panel's meetings.[38] Howe Testimony at 2788, *In re North Carolina*, HEW Docket 79-VI-l (dated Aug. 13, 1980) (Appendix at 93a). Mr. Howe stated:

> I apparently had been at a meeting of that group and apparently that was it, but I could not recall any details of the meeting. It did not make a great impression on me, quite clearly.
>
> * * *

[37] To the extent that the Criteria seek to advance institutional rather than individual rights, they proceed beyond the legitimate scope of Title VI. *See United States v. Alabama*, 791 F.2d 1450, 1456 (11th Cir. 1986), *reh'g denied*, 796 F.2d 1478 (11th Cir.), *cert. denied sub nom. Board of Trustees v. Ala. Bd. of Educ.*, 479 U.S. 1085 (1987). *See also* discussion *supra* at 10 n.10; Testimony of Sheldon E. Steinbach, *infra* at 29-30.

[38] Mr. Howe testified on August 13, 1980, in an HEW administrative proceeding involving allegations of higher education discrimination in North Carolina. According to Mr. Howe, the blue ribbon panel met in January 1977, *see* Howe Testimony at 2787-88 (Appendix at 93a); the panel's one meeting actually took place in June 1977.

> And it doesn't surprise me that I forgot the affair, but I regret that I did, and I can't give much more report than that about it.
>
> * * *
>
> I really don't have any solid recollection that would be useful.
>
> * * *
>
> And then Joe [Califano] — and I think maybe Joe was being supercilious, because he had heard I had forgotten the meeting.
>
> In any event, he did say, "You did a great job for me, Doc, on that blue ribbon panel," as he got in the elevator. And that's all I can tell you; I made no response.

Id. at 2788-90 (Appendix at 93a-94a).

Mr. Howe's complete lack of recall regarding the development of the Criteria is not surprising in that the meeting of the blue ribbon panel lasted little more than two hours, had no set agenda, and was essentially a loose discussion of various topics. Indeed, in response to deposition questions by Government attorney Jeffrey Champagne, panel member Sheldon E. Steinbach, who at the time of the panel was General Counsel of the American Council on Education, described the meeting:

> There seemed to be . . . a uniformity of views expressed by people with expertise and a self-interest in predominantly black institutions of higher education. The white members of that panel from the best of my recollection were remarkably quiet during most of the discussion that afternoon.
>
> * * *
>
> There seemed to be general agreement and a majority of the time spent once Mr. Califano walked into the room, after he made his presence . . . with the benefits to [the] black community in general in preserving the traditionally black institutions of higher—public black institutions of higher education.
>
> * * *

> My recollection it [the meeting] started at 2 o'clock, around 2 o'clock; ended at about 4:30, 4:45, possibly a little earlier, 4:15.
>
> * * *
>
> Following [the early part of the session] there was . . . a substantial discussion of the merits and value to the black community of maintaining these institutions. There then followed a reasonably lengthy discussion of the inequality of allocation of resources to the black institutions. That took up a major portion of the time.
>
> * * *
>
> There was certainly no written material passed out. To the best of my knowledge there was no agenda placed before us and from the face of the invitational letter, as I recall it, and from what actually occurred, it was a far-reaching discussion of a variety of things which happened to come to people's minds.

Deposition of Sheldon E. Steinbach at 10-16, *In re North Carolina*, HEW Docket 79-VI-1 (dated June 5, 1980) (Appendix at 99a-102a).

Mr. Howe's lack of recall regarding the development of the Criteria, and Mr. Steinbach's description of the blue ribbon panel combined with HEW's successful efforts to violate the FACA, reveal that private petitioners, the Califano Group and the LDF Group are ascribing to the Criteria a far more serious and formal character than that contemplated by the participants on the reviewing panel and by HEW itself. The Califano Group should not now be permitted to rewrite history and to mislead this Court into binding the affected states to Criteria which were intentionally developed in the dark by bureaucrats seeking to advance their own uninformed theories of higher education desegregation.

CONCLUSION

For the foregoing reasons, Amici support the respondents' request that the decision of the Fifth Circuit be affirmed.

MARGARET E. WOODWARD*
610 Poydras Street, Suite 318
New Orleans, Louisiana 70130
(504) 525-9538

Counsel for Board of Regents of the State of Louisiana

W. SHELBY MCKENZIE*
NANCY C. DOUGHERTY
Taylor, Porter, Brooks & Phillips
451 Florida Boulevard
Baton Rouge, Louisiana 70801
(504) 387-3221

Counsel for Board of Supervisors of Louisiana State University and Agricultural and Mechanical College

JOHN N. KENNEDY*
Special Counsel to the Governor
Office of the Governor
4th Floor, State Capitol
P.O. Box 94004
Baton Rouge, Louisiana 70804
(504) 342-7015

JOSEPH J. LEVIN, JR.
JOHN M. FREEMAN
JOHANNA F. CHANIN
Colton and Boykin
1025 Thomas Jefferson St., N.W.
Suite 500 East
Washington, D.C. 20007
(202) 342-5400

Counsel for Governor Charles E. "Buddy" Roemer, III, Governor of the State of Louisiana

*Counsel of Record

Nos. 90-1205, 90-6588

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA,

Petitioner

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *ET AL.*,

Respondents.

JAKE AYERS, SR., *ET AL.*,

Petitioners

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *ET AL.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

Appendix To Brief Amici Curiae Of Charles E. "Buddy" Roemer, III, Governor Of The State Of Louisiana, Board Of Regents Of The State Of Louisiana, And Board Of Supervisors Of Louisiana State University And Agricultural And Mechanical College In Support Of Respondents

MARGARET E. WOODWARD*
610 Poydras Street, Suite 318
New Orleans, Louisiana 70130
(504) 525-9538

Counsel for Board of Regents of the State of Louisiana

W. SHELBY MCKENZIE*
NANCY C. DOUGHERTY
Taylor, Porter, Brooks & Phillips
451 Florida Boulevard
Baton Rouge, Louisiana 70801
(504) 387-3221

Counsel for Board of Supervisors of Louisiana State University and Agricultural and Mechanical College

JOHN N. KENNEDY*
Special Counsel to the Governor
Office of the Governor
4th Floor, State Capitol
P.O. Box 94004
Baton Rouge, Louisiana 70804
(504) 342-7015

JOSEPH J. LEVIN, JR.
JOHN M. FREEMAN
JOHANNA F. CHANIN
Colton and Boykin
1025 Thomas Jefferson St., N.W.
Suite 500 East
Washington, D.C. 20007
(202) 342-5400

Counsel for Governor Charles E. "Buddy" Roemer, III, Governor of the State of Louisiana

*Counsel of Record

Balmar Legal Publishing Division, Washington, D.C. 20005 (202) 659-3610

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COMMENTARY

The Virginia-Pilot
THE LEDGER-STAR
12/10/78

DAVID TATEL: HEW's VOICE IN COLLEGE CRISIS

David S. Tatel, 38, is the director of the Office for Civil Rights of the U.S. Department of Health, Education, and Welfare. He is responsible for federal civil rights policy involving minorities and the handicapped.

OCR oversees compliance with the desegregation rulings of the federal courts in a nine-year-old case generally known today as Adams vs. Califano, involved are federal efforts to desegregate state-operated colleges and universities in six Southern states, including Virginia and North Carolina.

The case in Virginia has reached a critical stage in which Tatel and his immediate superior, HEW Secretary Joseph A. Califano have threatened to begin to cut off the flow of federal money if duplication of nine programs is not ended at predominantly black Norfolk State College and predominantly white Old Dominion University. The deadline is Jan. 6. A similar situation is developing in North Carolina.

For the last two years, Tatel has been one of the most inaccessible of federal officials. The following interview, conducted in Tatel's Washington office Nov. 29 with Virginia-Pilot education writer Jeff Brown, is the first extensive public comment by Tatel on the Virginia desegregation crisis.

Q & A

Brown: I want to start out just talking about desegregation in general in 1978. What is the purpose of desegregation now? It seems to me that years ago the purpose was to break down laws that were obviously intended to segregate. How has that changed?

Tatel: The courts have established two requirements in the desegregation process. The first is to eliminate the actual discriminatory conduct. In Virginia and these other states, that's the law,

state law, that required blacks to go to black schools and whites to go to white schools.

The second part of the requirement is to eliminate the vestiges of the dual system. That is, the effects of the past discrimination. That's what we're dealing with now. What the courts have said is that many of those effects still remain in the form of systems of higher education that have a large number of predominantly white schools and several predominantly black schools. There are other effects that the courts have found. Like, for example, that the schools that were the black schools in the former dual system are underfunded, have inadequate resources, inadequate physical plants, that the percentage of blacks graduating from the high schools in this state and entering the state colleges are lower than the percentage of whites

Q. Is there any sense of how long a process this is going to take?

A. Well, it should have been over years ago.... The plans we're now negotiating are five-year plans. And we think that if the plans are acceptable and if the states fulfill their commitments the process should be over in five years.

Q. In Norfolk the people, the blacks at Norfolk State, are * * * that the duplication of programs be dropped. Who is being helped if the blacks are opposing this?

A. Well, remember now, we're not talking about dropping programs; we're talking about two things for the blacks school. One, giving it new programs, which the state has already agreed to do. And secondly, giving it essentially a monopoly in the Tidewater area on some of the duplicated courses it now offers.

So although it can drop one course it will be given the monopoly on another course, which would presumably be larger as a result. So, as a result, the institution's strengthened and desegregated. And that's the purpose of the whole process.

Q. Why push so hard to do that if the blacks are opposed to it?

A. I don't believe that blacks are opposed to it, if it's done properly. Remember, the lawsuit that we're acting under was brought by a black organization. Most of the black leaders I've spoken to support the effort.

Q. Locally or nationally?

A. Both. And you saw the NAACP director in the Tidewater area supports the effort. The purpose of it is to desegregate the institutions. And I'm convinced if it's done properly both white and black educators will support the process.

Q. Do you think the fear at the black institutions is partly due to the history that whenever something has been taken it's never been replaced adequately? Is there more assurance now that will guarantee that something will not be taken away and a vacuum left?

A. * * * institutions have a legitimate reason to be worried. When elementary and secondary schools were desegregated it was the blacks who lost their jobs. The black teachers and the black administrators. And the plans we're negotiating with the states insure that if there is going to be a reduction, which nobody would expect – I mean there is no reason for it – that it would be done nondiscriminatorily. The plans have lots of protections for black administrators and black teachers. And the whole purpose of these plans is to protect black institutions.

[Picture Omitted in Printing]

Q. Blacks have talked about the need to keep the black school primarily black as part of the effort to retain the black identity. There was a story in the Chronicle of Higher Education this week about a predominantly black school in Florida where they're worried that the white enrollment is going to increase to such a point that it's going to dilute the character of the place. What is the place of black identity in an institution, and what in your mind does the black identity mean when that term is used?

A. Well, what it means to us is the preservation of the institution. As an integrated institution you can preserve the white identity of a white institution and still have it integrated. And there's no logical reason why you shouldn't be able to preserve the identity of a black institution and have it integrated. This is not a racial-balance law that we're applying. We're not insisting, and probably there never will be, blacks and whites evenly distributed in every institution in the state.

Q. Is that a goal?

A. No, it's not. That's what I said. This is not a racial balance thing. The purpose of it is to have enough blacks attending the white schools and enough whites attending the black schools so that we can conclude they are in fact integrated.

Q. Is there any evidence beyond the discrepancy in enrollment of the two institutions that there is discrimination in admissions policies?

A. Discrimination now?

Q. Now.

A. No. All we're talking about, and this has been made clear all along, is the effects of past discrimination, that is the former state laws that limited attendance to these institutions on the basis of race, and that effect has continued into the 1970s.

Q. Blacks like Harrison Wilson, president of Norfolk State, argue that that point of view indicates that Office for Civil Rights is out of touch with the present feeling in the black community. His argument is that though the historical reasons for Norfolk State's founding were wrong the present situation is not and that historical reasons aren't relevant to the present situation.

A. Well, they are relevant. The courts have told us they're relevant. We're dealing with a system of higher education that was once segregated. Brown vs. Board of Education (the 1954 Supreme Court ruling that struck down the separate-but-equal principle of public schooling) requires that it be segregated. And that's the over-riding concern. We're only dealing with public black colleges. We are not talking about the probably 100 or 150 private black schools throughout the country that aren't affected by this. But these public black institutions are under the same obligation to desegregate as are the white institutions that are members of the same system.

Q. If these two schools comply within the next month or so and each drops some programs to eliminate the duplication is there any guarantee that the plaintiffs won't reactivate the case or that Office for Civil Rights won't come back with some other requirement?

A. There's no guarantee that the plaintiffs won't challenge the plans but there is a guarantee, that if we accept the plan we'll defend it with the state. And I mean what happened a few years ago where

the department did not defend the plan will not happen. If we accept them, we'll defend them. But I can't guarantee that the plaintiffs won't challenge them.

* * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

vs.

STATE OF LOUISIANA, *et al.*

Testimony of CLIFTON F. CONRAD, taken on Monday, February 6, 1989, before Michael L. Turney, Certified Shorthand Reporter in and for the State of Louisiana, at the office of Taylor, Porter, Brooks & Phillips, Attorneys at Law, 451 Florida Boulevard, 8th Floor, Baton Rouge, Louisiana.

* * *

[303] student body is racially identifiable?

A. Again, we talked about figures the other day of 20 and 30 percent having been used frequently in the courts, 30 or so. I think once an institution hits 25 or so, 25 to 30 percent, that it's not racially identifiable, in general.

Q. So [illegible]dominantly black institutions that achieve a racial composition [illegible] or 30 percent white, you would consider those no longer to be [illegible]ly identifiable, if that's what I understand your testimony to be.

A. Yes. Yes, sir.

Q. And for predominantly white institutions, when are they no longer racially identifiable?

A. The same.

Q. The same?

A. Yes.

Q. Do you know of any place, Dr. Conrad, where program transfer has proved successful in increasing other-race presence?

A. Well, there have been some

* * *

[313] Louisiana?

A. Well, I judged everything against an overarching criteria, and that was: To what extent would a given act contribute or diminish advancement toward integration? And that was the benchmark against which I would look at, for example: Should PBIs be closed, or should several PWIs be closed?

And against that criterion I didn't think that – well, I did consider, to be perfectly honest, that closing some institutions, black and white, might help to advance integration. In all instances I thought that the cost, nonpecuniary as well as pecuniary, would be very substantial, and, hence, not worth the closure.

Q. Isn't it true, Dr. Conrad, that the most intractable problem in Louisiana and all of the stays [sic] which have publicly [sic] predominantly black institutions that the most intractable problem is increasing white presence in those institutions? That is much more intractable than introducing black students to predominantly white institutions?

[314]A. Well, I think you can infer that from my report, yes.

Q. Well, is it true, or not?

A. It's a very difficult problem.

Q. Isn't it true, Dr. Conrad, that it is a much more difficult problem to get white students into predominantly black institutions than black students into predevelopmently white institutions?

A. Yes.

Q. So would not the closing of the predominantly black institutions free up both, under some method that I'm sure all of you people in higher education provides, without grandfather provisions and other kinds of provisions, free up a significant number of present and future black students to make significant inroads into the increased minority presence of black students in higher education and on the white campuses in Louisiana?

A. Yes. Yes, I did.

Q. And then your most intractable problem is –

A. As well as the vice versa.

[315]Q. Then your most intractable problem would disappear, would it not?

A. Yes. There would be – largely dissipated.

Q. During your several hours of discussions with Mr. Jefferson in Washington, did you discuss with him the possible remedy of the closing of the predominantly black institutions to achieve desegregation in Louisiana as a topic of discussion with Mr. Jefferson?

A. Generally speaking, we talked about what I felt about different remedies, yes.

Q. Did you discuss that remedy in particular?

A. The closing of the back institutions?

Q. Yes, sir.

A. No, I don't think I discussed it with him.

Q. Have you ever discussed it with Mr. Jefferson?

A. No.

* * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

VOLUME I

DEPOSITION OF DR. ROBERT B. GEX, 7533 Oak Street, New Orleans, Louisiana 70118, taken before Cindy K. Tregre, Certified Shorthand Reporter in and for the State of Louisiana, taken in the Law Offices of Jefferson, Bryan, Gray, Jupiter & Blanson, Suite 1850, 650 Poydras Street, New Orleans, Louisiana, commencing on Thursday, the 16th day of February, 1989.

APPEARANCES:

Representing the United States of America:

LEVERNE YOUNGER
Attorney at Law
10th and Pennsylvania Avenue
Room 732
Washington D.C. 20530

Representing the Board of Trustees:

BRONFIN, HELLER, STEINBERG
& BERINS
Attorneys at Law

BY: JULIA S. MANDALA
2500 Poydras Center
650 Poydras Street
New Orleans, Louisiana 70130

* * *

[20] Q. In 1972 what was the racial composition of the faculty in the evening college?

A. I would imagine – I don't know exactly but I would imagine about 60 percent Black and approximately 40 percent White.

Q. Okay. What was the racial composition of the adjunct professors to the best of your recollection?

A. I would imagine approximately the same, but I really don't know.

Q. Okay. What was the racial composition of the faculty as a whole in 1984 in the Evening and Weekend College at SUNO?

A. I don't know but I would assume that it would have been approximately 60 percent Black and approximately 40 percent White.

Q. So it didn't change over a – from 1972 to 1984?

A. Well, the numbers changed but the percentages would not have changed [21] very much.

Q Okay. What was the racial composition of those faculty members who were adjunct professors in the college in 1984?

A. I don't know, but I would assume that again the adjunct professors were probably around 30 to 40 percent White and 60 to 70 percent Black.

Q. Was part of your job as dean or as an administrator we'll say, because I think you said you had other titles besides dean, as administrator was part of your job responsibility the recruitment of faculty members?

A. Yes, it was.

Q. Did you as dean make any efforts specifically directed during that time period toward the recruitments of other race faculty members?

A. If by that question you mean did I set out to recruit White faculty members?

[22] A. That's what I mean, yes, sir.

A. (Shaking head negatively).

Q. No?

A. No, I didn't, but the fact of the matter is we were always looking for the best qualified faculty we could find. We had a number – generally we did not have to go out and recruit faculty. They generally came in to inquire about positions, availability of positions and we had them fill out a teacher application form which we kept on file and we could go to that file and bring those people in as necessary.

Q. Was it your testimony that as dean you were satisfied with the racial composition of the faculty during that time?

A. To be absolutely honest, I wasn't concerned with the racial composition of the faculty at that time. I was only concerned with having the best faculty I could recruit and I [23] really was not concerned with any particular numbers of Black faculty or White faculty.

Q. Okay. 1984 to 1987 I see from your response to Question Number 2 you served as associate vice chancellor for academic affairs at Southern University in New Orleans; is that correct?

A. Yes, sir.

Q. Could you describe your job responsibility for me in that capacity.

A. Okay. I was basically the assistant to the vice chancellor for academic affairs, and was responsible for the same duties he was responsible for in his absence; however, I had certain responsibilities delegated to me and that was schedule making, overseeing the general programs of the university, academic programs of the university, serving on certain committees as the representative of the vice chancellor of academic affairs [24] such as the curriculum committee among others. In general, whatever duties and responsibilities he delegated to me.

Q. And from 1987 to November of 1988 I see from your response to Question Number 2 in your report you served as vice chancellor for academic affairs; is that correct?

A. That's correct, yes, sir.

Q. Could you tell me about your job as vice chancellor of academic affairs?

A. Sir, the responsibility was all encompassing for the academic programs of the university. That was -- and that included registration, the library, the program quality on the various programs, having – setting up programs for accreditation, visits, just any number of things, yes.

Q. Did you have any responsibility in your capacity as vice chancellor for other race recruitment, other race student recruitment?

[25] A. Specifically, no.

Q. What do you mean by specifically?

A. What I mean is that there was – at that time under the Consent Decree there was an office that was set up called the other race recruiter that was part of our high school relations, recruitment efforts.

Q. Yes, sir.

A. And that did not come under the purview of the vice chancellor, et cetera.

Q. Whose purview did that come under?

A. I guess under the office of student affairs. I really don't remember.

Q. Okay. And since December 1, 1988, you've been the interim chancellor at SUNO; is that correct?

A. Yes, sir.

Q. Okay. Would it be fair to say from 1972 to the present time you've been a part of the administration at [26] Southern University in New Orleans?

A. Yes, I guess that would be a fair statement.

Q. Okay. Would you describe for me, if you would, sir, the efforts during that period as best you know them of the administration at SUNO in terms of other race, i.e., White student recruitment?

A. As far as I know the other race student recruitment was done primarily by the high school relations office and specifically the other race recruiter, and since I was not responsible for either directing or overseeing any of his efforts I'm not really sure what that entailed. However, during – as far as – to the best of my knowledge what it did entail was while some other high school members of the high school

relations office might have recruited students, made visits in predominantly Black schools, the other race recruiter had the responsibility for attempting to do [27] the same thing in predominantly White schools, and was responsible and had the responsibility – and I don't know whether there were any quotas set for him by the administration other than the ones that were set in the Consent Decree itself as to the number of other race students he was expected to recruit.

Q. Okay. Well, do you know what measures other than recruiting at high schools at that time were taken, once again while you were part of the administration at SUNO, to increase the White enrollment at SUNO?

A. I do know that there were a number of displays put in – answer desks and so forth put in the malls of certain shopping centers.

Q. Yes, sir.

A. There were efforts made through ACT lists that would come out that letters were sent to attempt to recruit other race students. I do know that there was a distinct effort made [28] to involve faculty members along – on these trips to the high schools to recruit other race students, but specifically other than those general things, I don't know what the results of those were.

Q. Okay. In you job as interim chancellor, have you ever had occasion to inquire into what those efforts were and how successful they were?

A. No, sir.

Q. Is there a reason for your not inquiring?

A. Well, all I can tell you is I had no reason to inquire. The question never came up.

Q. Could you describe to me, if you would, sir, once again from your perspective as an administrator beginning in 1972 at SUNO the efforts that were made by the administration at SUNO to recruit other race, i.e. White faculty members?

A. I really do not feel qualified to answer that question [29] because while I was a member of the administration – of as you put it the administration, there were other levels and other administrators

who had that responsibility. It was not mine until I moved into the office of the associate vice chancellor for academic affairs.

Q. Uh-huh (affirmative response) .

A. And in that case, I can – so that I cannot speak to what, quote, unquote, the administration of SUNO was doing from '72 to '84 to recruit White faculty. Now if you'd like –

Q. I'm sorry. I thought you were through.

A. If you'd like me to answer after '84, I can tell you that we – whenever vacancies occurred, we had the list of available White faculty from the – is it the SERB [sic] or one of the agencies, some state clearing house agency and we made every effort to recruit White faculty from that list. [30] But we have never had a problem recruiting White faculty. The fact of the matter is I think by whatever definition we might consider a faculty to be integrated we certainly would meet that. I think we have approximately 30 to 35 percent, maybe even higher White faculty on our campus at this time.

Q. And how long have you had that racial composition among your faculty?

A. Oh, I suspect as far as I was aware of numbers being kept in that – for the day school faculty I have not – was not involved in that prior to '84, and even though I was a member of the administration –

Q. Yes, sir.

A. – from '72 to '84, I was dealing primarily with the evening college and was not involved in the recruitmen. of White faculty for either – for the day school or White students for the day school.

* * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 80-3300
Section "A"

UNITED STATES OF AMERICA

versus

STATE OF LOUISIANA, *et al.*

VOLUME II

CONTINUATION OF THE DEPOSITION OF DR. DOLORES R. SPIKES, 1315 Balsam Avenue, Baton Rouge, Louisiana 70807, taken before Cindy K. Tregre, Certified Shorthand Reporter in and for the State of Louisiana, taken in the Law Offlces of Bronfin, Heller, Steinberg & Berins, Suite 2500, 650 Poydras Street, New Orleans, Louisiana, commencing on Tuesday, the 28th day of February, 1989.

APPEARANCES:

Representing the United States of America:

FRANZ R. MARSHALL, ESQUIRE
Attorney at Law
United States Department of Justice
10th and Pennsylvania Avenue
Room 732
Washington, D.C. 20530

* * *

[79] possibility I don't know. It just seems that it ought to that it would reach whatever magnitude the court would desire.

Q. Well, Let's not talk about the magnitude the court would desire for a moment. Let's approach it a little differently.

A. All right.

Q. Let me ask you as an educator do you have an opinion as to what percentage of White students at Southern University at Baton Rouge, as to what percentage would constitute a White presence on

that campus that would result in the kind of educational benefits that one would expect from integration?

A. I think that over a period of time, I don't think there's going to be instant integration by any of these means, I think that over a period of time we could reasonably expect somewhere between 20 to 30 percent White students on the Black colleges – [80] college campuses, and I –

Q. What period –

A. I may be talking about somewhere around 15 to 20 years' time for that to occur.

Q. And do you think that that level of desegregation, not in terms of a legal standard but in terms of an educational standard would be –

A. In terms of an educational standard?

Q. Yes, ma'am.

A. Yes, I think so.

Q. Do you have a view as an educational matter, not as a legal matter, as to what an adequate percentage of Black students would be at the predominantly White institutions?

A. I think we've looked at the initial figures somewhere which have shown that you may expect, given the number of White institutions in the state, the pool from which to draw that one could reasonably – depending upon [81] the location of the institution, expect from – anywhere from 15 percent Black on up to something even greater in the New Orleans area I guess, but I think as a minimum somewhere around 15 percent.

Q. I take it, Dr. Spikes, and correct me if I'm wrong, that you've never been involved in the transfer of an academic program; is that correct, from one institution to another?

A. That's correct.

Q. You note at Page 20 of your report for fall semester 1988 40 other race students applied for academic scholarships and that only 17 could be awarded because of limited funds. Did you – in fall of 1988 did you expend all the money available to you at Southern University for other race scholarships?

A. As far as I recollect, yes.

Q. When you call it other race academic scholarships was there any – are these scholarships awarded strictly

* * * *

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA SAVANNAH DIVISION

CV479-251

MARSHA ARTIS, *et al.*,

Plaintiffs

vs.

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, *et al.*,

Defendants

ORDER

[Filed Feb. 2, 1981]

This case is before the Court pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 1343(3) and (4) and other civil rights statutes. Suit was originally filed August 7, 1979, claiming that the defendant Board of Regents operated a dual system of public colleges in Savannah, Georgia, in violation of the Fourteenth Amendment. Plaintiffs then sought a preliminary injunction to stop implementation of a limited desegregation plan which had been approved by the Department of Health, Education and Welfare, so that a complete merger of the two institutions, Savannah State College (SSC) and Armstrong State College (ASC), could be achieved. A hearing was held on this injunction August 24, 1979. At this hearing plaintiffs announced dismissal of HEW as a party defendant. Evidence on the racial history and composition of the two institutions was also received.

After review of this evidence, the Court concluded in its Order of September 4, 1979, that plaintiffs had failed to demonstrate either irreparable injury or a substantial balance of harms in their favor. Accordingly, plaintiffs' motion was denied.

Subsequently, this Court has entertained additional evidence and argument particularly at a bench trial held November 12, 1980. At this proceeding, plaintiffs indicated that they had abandoned their demand

for a complete merger of SSC and ASC. Instead, plaintiffs argued that this Court should promote desegregation of both schools by requiring a total end to duplication in their program offerings. Plaintiffs also argued that this remedy was demanded by the apparent failure of the HEW plan to achieve its objectives. This plan centralized all business administration courses at SSC and education courses at ASC.

After careful consideration of available evidence and argument, I have concluded that there has been no showing that the current racial composition of the two institutions is the result of constitutional violations by the defendants and not the individual choices of students. In view of this determination, the Court finds that no basis exists for ordering any of the relief here sought. The Court further concludes that, even if certain actions of the defendants did violate constitutional mandates, these actions have had only minimal impact on racial balance at the two schools and have been adequately remedied by the defendants' more recent policies. The reasons for these determinations are developed more fully in the following materials, denominated Findings of Fact and Conclusions of Law. However, should the content of any item be at odds with its classification, content shall be controlling.

Findings of Fact[1]

1. Armstrong State College and Savannah State College are four-year institutions operated by the defendant Board of Regents in Chatham County, Georgia.

2. SSC was originally named Georgia State Industrial College for colored youths. It was created by the Georgia General Assembly on November 26, 1890 for purposes suggested by its name. The University of Georgia and the School for Colored Students jointly operated the school initially in Athens, Georgia. In 1891, it was moved to its present site in Thunderbolt, Chatham County, Georgia. In 1932, the college was renamed Georgia State College and incorporated

[1]Finding of Fact 1-7 are drawn largely from the Court's Order of September 4, 1979. This Order was, of course, based upon evidence placed before the Court at the August 24, 1979 hearing. The remaining portions are based on materials and testimony from the bench trial conducted November 12, 1980. However, in any event, there is little dispute as to facts in this case.

under the Board of Regents of the University System of Georgia. It was again renamed in 1950, when it became Savannah State College.

3. SSC has remained predominantly black throughout its history. The mean enrollment (full and parttime students) for the 1978-79 academic year was 1,949 students. Of these, 1,813 (93%) were black. More recent statistics reflect a higher percentage of white and foreign students, but blacks still constitute about 88% of SSC enrollment.

4. Armstrong State College was first opened in 1935 as a junior college. The City of Savannah operated the institution until 1959 when it became a part of the University System of Georgia. ASC was elevated to four-year status by the Board of Regents in 1964.

5. Armstrong has been and remains today, a predominantly white college. No blacks were admitted until 1963. Average quarterly enrollment in the 1978-79 academic year was 2,895 students, of which about 87% were white. The most recent statistics available to the Court indicate that white enrollment is over 83%.

6. In July, 1977, HEW informed the defendant Regents that a desegregation plan accepted in 1974 had been rejected by the District Court of the District of Columbia. *Adams v. Califano*, 430 F. Supp. 118 (1977). Responding to this development, HEW defined new criteria for desegregation of higher education in Georgia as well as several other states. These criteria emphasized (1) use of comprehensive, coordinated statewide plans, (2) development of specific funding commitments and project goals and (3) avoidance of any reduction in blacks' educational opportunities or the status of black colleges. In addition, the revised HEW criteria emphasized elimination of unnecessary duplicative programs among black and white institutions; giving black institutions priority in placement of new degree program; and increased black utilization of higher education in the affected states.

7. In response to these criteria, the Board of Regents developed a revised desegregation plan for ASC and SSC. This plan was submitted to HEW on October 19, 1978, and approved by it in February, 1979. Under its provisions, ASC and SSC are expected to set up a joint continuing education program for the local population. The plan also calls for elimination of duplicative courses by centralization of the business administration program at SSC, and a similar transfer of all

teacher education courses to ASC. In conjunction with these changes, the plan provides for faculty transfers, maintenance of existing funding levels and student scholarships, and free shuttle bussing between the two institutions. The plan provides further for enhancement of SSC by addition of several new degree programs and substantial capital expenditures to improve the physical plant.

8. This plan is only one of many efforts made at least since 1971 to change the clear racial identities of the two institutions. Joint degree programs were first discussed in 1969 and in fact initiated in 1971. SSC has taken special steps to recruit white faculty. Attempts have also been made to integrate graduate programs. These efforts have occurred through the active cooperation of administrators at the two institutions. There has been no evidence presented which suggests resistance to these steps at either institution. There has been no evidence that any student has been denied access to either institution on grounds of race, at least since the middle 1960s.

9. It is apparent from the statistics on racial composition presented above that the joint efforts of SSC and ASC officials had comparatively little impact on the nature of the two institutions. Testimony presented at trial confirmed that both institutions remain clearly identifiable racially and that neither appears likely to achieve substantial racial balance in the foreseeable future. This conclusion may be particularly applicable where program duplication allows students to choose on both racial and educational grounds. But, in all events, projections under the HEW plan for increased minority enrollment are not being met. Even when duplication has been ended, most students have not chosen to follow their educational interests to a school where they would be in a racial minority. See CL 5.

10. The lack of change in the racial identities of ASC and SSC may be due in some part to the establishment of duplicative programs, notably in social work and criminal justice at the two institutions. Similarly, racially-based decisions by students may be facilitated by the availability of Georgia Southern College (GSC) which is predominantly white and only about sixty miles from Savannah.

However, it appears that the defendants have made substantial efforts to defeat any segregative impact of the existence of duplicative programs. As preparatory steps to eventual merger of the two institu-

tions, joint programs have been developed between the two colleges in a number of areas including criminal justice and social work. Furthermore, there is no reason to believe that any action taken with respect to GSC has been intended to do more than provide for actual increases in enrollment which have developed out of individual student choices.

11. The primary determinants of the racial character of ASC and SSC are the individual choices of potential students. These decisions are based upon factors such as peer pressure, family ties, as well as educational and athletic opportunities. As was noted above, these decisions are not easily changed by the actions of school officials or development of programs such as the HEW-mandated plan. In fact, Dr. Prince Jackson, former president of SSC and a witness for the plaintiffs at the preliminary injunction hearing testified as follows:

> [F]or students to go to a school in a true society (an integrated school) you have to reduce the number of choices that they have. The reason we have the black and white thing is because students do have choices so we have to reduce the number of choices that they have.

Tr. 44. Thus, the evidence is clear that the overwhelming reason for the racial imbalances plaintiffs complain of is the individual decisions of students who are, after all, free to attend or not attend college where and when they choose. It is not to be attributed to any active effort to create or maintain segregation by the defendants. It is not likely to be altered significantly by the steps plaintiffs seek or any measures which leave students free to "vote with their feet."

Conclusions of Law

1. This Court has jurisdiction over the present case pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 1343(3) and (4) and other civil rights statutes.

2. Where a state has maintained a dual system of education, it has a duty to "disestablish" this system "root and branch." *Green v. School Board of New Kent County*, 391 U.S. 430, 437-38 (1968). However, before any judicial remedy may be imposed, a currently existing constitutional violation must be shown. In the absence of such a violation, no judicial remedy may be imposed. *Dayton Board of*

Education v. Brinkman, 433 U.S. 406, 419-420 (1977); *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 434 (1976); *Milliken v. Bradley*, 418 U.S. 717, 738 (1974).

3. The mere existence of racial imbalance, however pronounced, is not a constitutional violation. *Brinkman, supra,* at 413, 417. Furthermore, the fact that racial imbalances were originally created or promoted by official acts in the distant past does not mean that the continued existence of such imbalance is attributable to these official acts. *Armour v. Nix,* U.S.D.C., N.D.Ga., No. 16780, Order of September 24,1979, at 20-21.

In the present case, it appears that the overwhelming reason for continued racial imbalances at ASC and SSC is the free choice of students based upon a myriad of factors, some related to educational considerations, others of a wholly personal nature. FF 11.

4. There is authority for the proposition that, where present constitutional violations are found, a state must carry out a complete merger of institutions of higher learning. See *Geier v. Blanton,* 427 F. Supp. 644 (M.D. Tenn. 1977), *aff'd,* 597 F.2d 1056 (6th Cir. 1979). However, in this Circuit, a state's duty to "disestablish" segregated colleges has been defined in far narrower terms:

> Higher education is neither free nor compulsory. Students choose which, if any, institution they attend. In making that choice they face a full range of diversity in goals, facilities, equipment, course offerings, teacher training and salaries, and living arrangements, perhaps only to mention a few.

Alabama State Teachers Association v. Alabama Public School and College Authority, 289 F. Supp. 784, 788 (M.D. Ala. 1967), *aff'd 393 U.S.* 400 (1969).

> We conclude, therefore, that as long as the State and particular institutions are dealing with admissions, faculty and staff in good faith the basic requirement of the affirmative duty to dismantel the dual system on the college level, to the extent that the system may be based upon racial considerations, is satisfied.

289 F. Supp. at 789-790. Thus, the defendants in this case are at most chargeable with a duty to act in good faith with respect to operation

of ASC and SSC. They are not constitutionally required to take affirmative action to destroy the racial identities of the two institutions, even to the extent that they are chargeable with direct contribution to that imbalance.

5. Broad relief of the suit plaintiffs seek here cannot be based on any mere *de minimis* or cumulative constitutional violations. *Dayton Board of Education v. Brinkman,* 433 U.S. 406, 413 (1977). The actions of the defendant must be a "substantial cause" of the segregation complained of. *Milliken v. Bradley,* 418 U.S. 717, 744-45 (1974).

Under the facts now before the Court, it cannot be concluded that any action of the defendants since about 1965 has contributed substantially to racial imbalances at ASC and SSC. Even if racial intent is ascribed to establishment of social work and criminal justice programs at both institutions, the impact of these decisions would appear to be minor. Only seventy-three degrees in social work were conferred by Armstrong between 1972 and 1977. Of these, six went to blacks. Enrollment in the criminal justice program is apparently higher, but still less than 10% of students at the two schools are involved. Defendants' Exhibit 2, August 24, 1979 (letter of December 15, 1977 to HEW office for Civil Rights, at p. 15). Furthermore, the minority percentages in these programs appear to be about equal to that in the overall student populations. *Id.* Thus, it is difficult to see how either has added to segregation of these institutions.

It is similarly difficult to see how increased funding at GSC could have had any substantial impact on segregation at Armstrong and Savannah State. The appropriations plaintiffs point to concern only the 1980 fiscal year. Of course, the racial imbalances complained of are of much larger duration. Moreover, they have persisted for many years in which there is no claim that any action with respect to Georgia Southern was involved.

Furthermore, plaintiffs' own evidence suggests strongly that the presence or absence of duplicative programs has only modest impact on integration in any event. HEW projections indicated that the switch of business and education courses would bring approximately 500 blacks to ASC and 500 whites to SSC. In fact, plaintiffs conclude that only about 114 whites and 85 blacks transferred. Thus, plaintiffs acknowledge that over 80% of affected students simply went elsewhere. It appears then that the defendants have at best very limited capacity to alter student enrollment decisions, even when they follow the policies plaintiffs seek here.

6. Even if the Court accepts *arguendo* the proposition that the Board of Regents have engaged in constitutional violations having substantial present effects, the actions of the defendants in adopting the HEW plan clearly meet the standards of good faith affirmative action discussed in *Alabama State Teachers Association, supra.* The desirability of eliminating duplicative programs has been accepted and the process, in fact, has begun. Cooperation between the institutions has developed. There is every likelihood that these policies will be pursued further in view of the quite effective financial pressure which HEW exerts over the defendants, if for no other reason. While this Court finds no constitutional violation which would support such measures, affirmative action in this context is certainly not impermissible. *Regents of the University System of California v. Bakke,* 438 U.S. 265 (1978). These steps clearly move SSC and ASC in precisely the direction plaintiffs here seek.

Discussion

This case presents the Court with several difficult questions of law and fact. There is as yet no settled answer to the problem of how much principles developed with respect to segregation in elementary and secondary education may be applied to colleges like Armstrong and Savannah State. Furthermore, the Court can find no easy method for determining the motivations of the defendants in their various official acts, many of which occurred years ago. Nor can the Court see any simple or definitive way to determine the basis for the educational choices of the many students whose conduct is the basic subject matter of this litigation.

However, based on the limited evidence and precedent available in this case, I have concluded that the overwhelming reason for the continued racial identities of ASC and SSC is the individual choice of students with respect to institutions which are neither free nor compulsory. Facts now before the Court suggest that official action has at best only limited impact on choices, which appear to reflect notions about the two schools that are of long standing and considerable

durability. The Court further concludes that the overwhelming weight of official action has been toward increasing, not retarding, "disestablishment." To the extent that limited opposite motives or impacts might be seen, it appears that there has been no substantial contribution to persistent racial imbalances at the two schools. Furthermore, it appears that the defendants have largely, if not completely, abandoned such policies and that they will continue to move in this direction in future years.

This Court is aware of the existence of contrary authority with respect to the legal duty of states which have maintained dual systems of higher education. See *Adams v. Richardson*, 356 F. Supp. 92 (D.C.D.C 1973), *aff'd* 480 F.2d 1156 (D.C.App. 1973). See also *Adams v. Califano*, 430 F. Supp. 118 (D.C.D.C. 1977); *Blanton, supra.* These cases apply concepts developed with respect to elementary and secondary directly to colleges, without reference to the many significant differences which *Alabama State Teacher's Association, supra,* finds determinative of the state's duty to "disestablish." In this case I have, of course, followed the *Alabama* reasoning. But, it should be re-emphasized that the plan in question was approved by HEW. Thus, there is no real, practical conflict in the direction to which the defendants are committed and the more demanding requirements of *Adams* which plaintiffs here seem to endorse. Furthermore, it is likely that the problems which plaintiffs point to in this plan will bring further attention from HEW (now HHS) and further responses from the defendants. The Court will look with interest upon these developments. But, under present law in the Fifth Circuit, I see no basis for the relief plaintiffs seek. Accordingly, the Court hereby orders that judgment be entered for the defendants.

So Order this 2 day of February, 1981.

/s/ [Illegible]
Judge
United States District Court
Southern District of Georgia

QUESTION: Has the merger of the University of Tennessee at Nashville (UTN) and Tennessee State University (TSU) been successful?

A Supplementary Report to the May 11, 1988 Report
(Also submitted herewith)

Prepared for the Board of Regents
of the
State of Louisiana

by
Wayne Brown
January 30, 1989
[WITHOUT ATTACHMENTS]

[2] INTRODUCTION

This report, dated January 30, 1989, should be considered as a supplementary report to the May 11, 1988 report prepared for the Board of Regents of the State of Louisiana. That report identified six basic conditions or criteria by which a successful merger of institutions of higher education should be measured, in the opinion of the author.

This supplementary report is organized as follows:

A. The method of analysis is outlined,

B. A brief general observation is presented,

C. Commentary supporting the general observation is presented, and

D. Supporting tables and documents, which supplement tables and documents contained within the May 11, 1988 report, are included.

[3] METHOD OF ANALYSIS

I. The definition, analyses, and summary observation contained-within the May 11, 1989 report were reviewed in their entirety.

II. No changes in the definition, including the six criteria, are deemed necessary.

III. Additional data pertaining to the fall of 1988 were obtained, and additional TSU enrollment items have been included within a new section labeled, "Document 15," which should be considered an addition to Volume 11, "Supporting Documents for Volume I," which was compiled on May 12, 1988.

IV. Additional analysis based upon data contained within Documents 15 as well as comparisons between data contained therein and data contained within the May 11, 1988 report is presented in this supplementary report.

V. Tables illustrating certain aspects of this most recent analysis are attached to this supplementary report.

VI. A brief general observation is presented on the following page, with additional commentary immediately succeeding the general observation.

[4] GENERAL OBSERVATION AND CONCLUSION

In spite of the provision of the resources previously available to both UTN and TSU, in spite of continuing special funding from the state to TSU, in spite of strenuous efforts on the part of the current president of TSU to relate the institution to both the white and black citizens of the greater Nashville area, TSU at present does not represent a successful merger according to the criteria listed in the May 11, 1988 report submitted herewith.

Specifically, criteria 3, 4, 5, and 6 still have not been met. (See commentary section of this supplementary report as well as the discussion of these specific criteria within the May 11, 1988 report.)

[5] ANALYSIS OF FALL 1988 DATA
(Including Comparisons with Previous Years)

Table 1 displays a comparison of headcount enrollments at TSU for the fall of 1987 and 1988. The data is displayed according to three general locations: main campus (the original TSU campus which includes dormitories and athletic facilities), the downtown campus (the former University of Tennessee at Nashville facility which includes no residences or athletics facilities), and a sum of all other off-campus locations.

Observation on Headcounts Enrollment: There was a slight overall increase in enrollment in the fall of 1988, and there were increases for black and white students, as well. The grand total of white students increased by 164 headcount compared with a grand total increase for black headcount of 158. There was an increase in enrollment of all races at the main campus (9.5%) but a decrease for all races at the downtown campus (4.9%). The slight change for enrollment for all other off-campus locations was not significant. In a conversation with the executive to the president of TSU on January 26, 1988, I was informed that the current strategy of TSU, which is reflected in the fall 1988 enrollment data, is to limit the downtown campus to two primary missions:

1. An evening school primarily aimed at working adults, and
2. The only location of upper division (junior and senior) business courses.

[5] Therefore, students must move between the two campuses in order to have enrollment in certain courses which are required for their graduation and which may occur only at one site.

Comparison of TSU Headcount Enrollments, Fall 1978 and Fall 1988:

Table 2 displays a comparison of the full-time equivalent enrollments at TSU by race in the falls of 1987 and 1988. This table reflects an increase in FTE enrollment for all races with the increase in white FTE enrollment slightly larger, as a percentage of the previous fall's enrollment, than for blacks.

Comparing data from Table 1 in this supplementary report with attachments 7 and 8 in the May 11, 1988 report reveals the following:

	Fall 1978*	Fall 1988
Black	5,259	5,649
White & Other Non Black	5,518	3,427
TOTAL	10,777**	9,076

* See Attachments 6 & 7 to May 11, 1988 report.

** In 1978 TSU had a total of 5,358 (4,454 black) and UTN had 5,419 (805 black).

Thus, even though there were slight increases in enrollment for black and white students in the fall 1988 when compared with the previous fall, TSU continues to serve substantially fewer students than was served in the fall of 1978 by TSU and UTN combined. In fact, through the fall of 1986 (eight years after the merger), TSU was serving fewer black as well as fewer white students than were served in 1978 by TSU and UTN. In the fall of 1987 (nine years after merger), TSU [7] finally began to serve as many blacks as the combined institutions served in 1978.

Observation Regarding Different Campuses of TSU:

Given the announced position of TSU regarding its plan of use for the downtown campus as an evening institution and as the location of all upper division business courses, it is difficult to determine whether the shifts between location f[illegible]all 1987 to fall 1988 are significant indicators of the overall [illegible]gress toward desegregation. However, as revealed in Tables 3 and 4, there were no *dramatic* increases in the percentages of white students at TSU between 1987 and 1988. The federal court's expectation of having at least 50% of the student body be white is not being approached rapidly.

Further, since the downtown campus is now to be utilized principally in the same manner as was the original intent of UTN – i.e., an evening school for working adults – it is clear from Table 3 that TSU is serving only 52% as many students as were served by UTN in the fall 1978 at the same location (2,828 divided by 5,419).

Observation Regarding "White" Scholarship Program:

In the January 26 conversation with the executive to the president of TSU, I was informed that TSU provided in the fall of 1988, 319 full scholarships for white undergraduates. According to this official, 28.5% of the undergraduate white students who were enrolled in the fall for a full academic load were on full scholarships as funded by the State of Tennessee. According to my previous experience as an official of the State of Tennessee, the number of these scholarships over the [8] past few years can account for the majority of the recent growth in full time white undergraduate enrollment at TSU.

Observation Regarding TSU's ACT Scores:

Table 3 lists the average ACT composite score for entering students in the fall of 1983 at each of Tennessee's public universities. TSU remains well below any other state university as well as significantly below the average of all other Tennessee universities in this regard. However, there was a slight improvement over the fall of 1987 (fall 1988 – 14.1, fall 1987 – 13.4 [Document 9]). Furthermore, while ACT data for entering freshmen in Tennessee's community colleges and technical institutes were not available to the author on January 30, 1989, TSU's fall 1988 level of 14.1 was still below the average for all community colleges and technical institutes in Tennessee in 1987 (14.6 [Attachment 9]). This is significant because by state policy the community colleges and technical institutes are "open admission" schools, whereas all Tennessee public universities are expected to have some announced admissions standards. Thus, as measured by this one indicator, TSU is functioning at a significantly lower level than any other public university in Tennessee. From my experience as Executive Director of the Tennessee Higher Education Commission, it is clear that TSU has not regained many students of the academic ability level as were enrolled at UTN just prior to the merger. Unfortunately, state policy in 1978 did not require the release by public institutions of ACT data, and, therefore, no table showing such scores for any institution, including TSU and UTN, can be presented in this report. However, from other information available to me when I [9] served as a state official, it is my opinion that UTN was functioning in the period 1975-78 with a student body which would roughly

parallel the academic level of students currently enrolled at UT Martin (fall 1988 ACT average 17.9), if not UT Chattanooga (fall 1988 ACT average 19.8). This observation is further supported by my recent three years of service as Dean of The Jack C. Massey Graduate School of Business at Belmont College in Nashville. In this latter capacity, I am recruiting Nashville students, including working adults, for both an MBA degree and a BBA degree. These were the largest programs of UTN prior to the merger. From my relationship with business leaders whom we are encouraging to send employees to our private program with substantially higher tuition than that at TSU, I am convinced that many students who are of the academic ability to have been admitted to the University of Tennessee are not enrolling at TSU but rather are enrolling in other Nashville area institutions, including the one I now serve. (See Attachment 5 to May 11, 1988 report for pertinent enrollment information.)

Observation Regarding Graduation Rate:

Table 4 contains data previously reported in Document 11 and refers to a goal of increasing the percentage of students who earn baccalaureate degrees. The latest data shows a slight loss in the percentage of students who initially enrolled in TSU and who subsequently graduated from a Tennessee public university within six years (24.97% graduation rate for 1982-88 in comparison with 26.27% for 1981-87).

[10] TSU lost ground with respect to graduation rates in 1988. Further, TSU's graduation rate for the 1982-88 period (24.97%) was significantly lower than the average of all other Tennessee public universities (40.94%). By this measure alone, TSU is serving a practical function that is different from other state universities – i.e., 75% of the students who enrolled as first-time freshmen at TSU in 1982 did not graduate from TSU or any other public university in Tennessee within six years.

Table 5 displays certain standardized examination scores for graduating seniors at public universities. This data is part of a set of goals established by the Tennessee General Assembly. For the three years reported in Table 5, TSU's mean score on the ACT College Outcomes Measure Project has not improved, and even declined

slightly, and in any case is significantly below the score of any other public university in the state. Thus, TSU is admitting students with lower academic levels, is graduating a smaller percentage of those students, and is graduating students who score lower on exit examinations than any other public university in the state.

Observation From Reviewing TSU Annuals:

In my efforts to determine whether the merger has been a success, I have reviewed the recent TSU student annuals. It is clear that the annuals reflect TSU's historic black identity. While a few photographs of white students can be seen, the overwhelming majority of the students pictured in the class sections and virtually all of the students featured in student activities or in casual campus settings are black.

[11] From my experience as a state official and from my residence in the greater Nashville area since 1975, these observations taken from the annuals are consistent with the image which is portrayed by TSU. Were it not for the large number of white undergraduate scholarships, there would be a substantially lower white presence at TSU.

While it would be useful to have information concerning the racial composition of the residence halls at TSU, the institution is not required to report such information, and did not make such data available to me.

In conclusion, it is my opinion that based on the criteria set forth in the May 11, 1988 report, TSU does not represent a successful merger of institutions of higher education.

QUESTION: Has the Merger of the University of Tennessee at Nashville (UTN) and Tennessee State University (TSU) been successful?

A Report
Prepared for the Board of Regents
of the
State of Louisiana

by
Wayne Brown
May 11, 1988
[WITHOUT ATTACHMENTS]

[2] METHOD OF ANALYSIS

1. Definition of successful merger is stated. The definition includes six criteria.
2. Analysis based upon data obtained from the offices of the Tennessee State Higher Education Commission is presented with a conclusion regarding each of the six criteria of the definition.
3. Tables and attachments related to each element are attached.
4. A brief summary observation is presented.

[3] DEFINITION OF SUCCESSFUL MERGER OF INSTITUTIONS OF HIGHER EDUCATION

In general, a successful merger would be one in which the following conditions occur:

1. The mission of the merged institution includes the most important elements of the missions of the previous institutions.
2. The resources of the merged institution include those of the previous institutions.

3. The primary constituents of each of the previous institutions continue to be served by the merged institution at least as effectively as was the case prior to merger.
4. New constituents are served as needs arise.
5. The services and programs of the previous institutions are continued with at least the same level of quality as occurred prior to merger.

Further, in a particular case of merger whose purposes include the expectation of achieving additional desegregation, the following condition must be added:

6. The prescribed racial goal is attained.

[3] CRITERION 1: The Mission of the merged institution includes the most important elements of the missions of the previous institutions.

The court's order for merger in 1977 and the plan actually used to execute the merger by July 1, 1980 clearly established an "expanded" TSU with all of the mission elements of the two previous institutions. This mission was immediately recognized and accepted by the THEC, the legislative and executive branches of government as the new official mission of TSU.

CONCLUSION: Criterion 1 of the definition was met at the point of official merger (July 1, 1980).

[4] CRITERION 2: The Resources of the Merged Institution Include Those of the Previous Institutions.

The court accepted the Board of Regents' plan of merger which stipulated that, regardless of enrollment declines (which occurred after the merger), state operating appropriations to TSU should be no less than the sum of the pre-merger appropriations to UTN and TSU for the period of four fiscal years (1977-78 through 1980-81). This was supported by the THEC, executive and legislative branches. (See Attachment 1.)

At the end of that period, a special formula was developed by my office such that TSU's appropriations would not be reduced in accordance with strict formula rules if its enrollment continued to be less than the combined pre-merged UTN and TSU numbers. Under

this special plan, TSU would not receive less than the sum of the amount the formula (Attachment 2 for 1982-83 details) specified plus an amount equal to one-half the difference between the formula amount and the previous year's appropriation to TSU. This procedure was accepted by THEC, the executive and legislative branches.

Further, TSU received special and disproportionate capital recommendations from THEC, and the legislature, while not funding all of THEC's recommendations, has continued to fund TSU in a special way (Attachment 3).

In addition, the legislature provided other funding to TSU as shown on Attachment 4. These funds were beyond formula considerations.

[5] TSU was during my administration and continues to be the best funded university in Tennessee on a per student basis.

Finally, the merged institution was given by the court all the faculty, student and physical resources of the two previous institutions.

CONCLUSION: Criterion 2 of the definition was met.

[6] CRITERION 3: The primary constituents of each of the previous institutions continue to be served by the merged institution at least as effectively as was the case prior to merger.

Between 1979 and 1986 the following headcount enrollment trends occurred:

1. Statewide Tennessee private enrollment was stable (Att. 5).
2. The six Nashville private institutions offering some programs similar to TSU's had, as a group, stable enrollment, although two, Belmont and Trevecca, grew significantly (Att. 5).
3. Statewide public university enrollment declined 6.9%, TSU declined 36.8% from the pre-merger level, while two state institutions just outside Nashville (APSU and MTSU) gained 11.1% (Att. 6).
4. Statewide black public university enrollment (excluding the Nashville area) grew by 12.2%, TSU lost 15%, while

the two state institutions just outside Nashville gained 43.2% (Att. 7).

CONCLUSION: The merged institution has failed to meet Criterion 3 since it has lost significant enrollment (including losses in total, white and black categories). Two private institutions in Nashville and two public institutions just outside Nashville have gained enrollments.

[7] Criterion 4: New constituents are served as needs arise.

From data available to me, the following population trends occurred between 1980 and 1986:

1. Tennessee gained 4.6% (Att. 8).
2. The Nashville metropolitan area gained 9.4% (Att. 8).

Taking these growths together with the data listed in Attachments 5, 6 and 7, the following conclusion is drawn.

CONCLUSION: The merged TSU has not served new constituents' needs, but other institutions in the Nashville area have. These others include two private institutions with significantly higher tuition levels than TSU.

[8] CRITERION 5: The services and programs of the previous institutions are continued with at least the same level of quality as occurred prior to merger.

Complete historical data on quality measures were not available from the filed of the THEC at the time of this report. However, three particular studies were initiated during the 1980s, and the following facts were derived from these studies:

1. Among public universities in Tennessee, TSU had the lowest ACT composite scores for entering freshmen; this position has persisted for at least the period beginning in 1983; the average of the mean scores at TSU was significantly lower (30%) than the other universities; and indeed TSU's score was lower than the average mean for entering freshmen at the community colleges, which (unlike the universities) have no academic admissions standards (Attachment 9).

2. TSU had lower scores for its graduating seniors on the recently required ACT COMP exam (Attachment 10).

3. TSU's percentage of full-time freshmen who subsequently earned a baccalaureate degree within six years after enrollment was on the order of 30% lower than such rates for other state universities in Tennessee for each of the three sets of freshmen studied (Attachment 11).

CONCLUSION: Criterion 5 has not been met by the merged institution.

[9] CRITERION 6: The prescribed racial goal is attained.

The court in its September 25, 1984 *Memorandum and Order* noted the failure of the merger, as of that date, in achieving the racial mix anticipated by the court in its 1977 merger order (p. 5 ff, Att. 12). The court stated,

"It is obvious the phenomenon of a black TSU still exists, and . . . it still negates the contention that the dual system has been dismantled."(p. 6, Att. 12.)

The court further noted that black first-time freshmen as a percent of total first-time freshmen rose from the 1979 (merger in progress) level of 69.7% to 90.2% in 1983. (p. 6, Att. 12.)

While there has been some trend toward desegregation among the faculty, professional and administrative staffs at TSU (Attachment 13), an analysis completed by using TSU Fall 1987 enrollment data by location, race and field of study showed that the original (main) TSU campus is still 75.1% black and the new (former UTN, downtown) TSU campus is 51.3% black. Only on the many other locations (off either campus) can there be seen a majority white student population (76.3%). (Attachment 14.)

CONCLUSION: The merged institution has not achieved the racial goals anticipated by the court.

[10] SUMMARY OBSERVATION

In spite of the provision of the resources of both UTN and TSU, and in spite of special funding from the state, the "new" TSU does not represent a successful merger according to the criteria listed above.

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THE MacNEIL/LEHRER REPORT

"Black Colleges"

In New York

ROBERT MacNEIL — Executive Editor

In Washington, D.C.

CHARLAYNE HUNTER-GAULT — Correspondent
DAVID TATEL — Office for Civil Rights, HEW
ALTHEA SIMMONS — NAACP
LEONARD HAYNES — Institute for Services to Education

In New Orleans

JESSE STONE — President, Southern University

Producer — Reporter
SHIRLEY WERSHBA — JUNE CROSS

Funding for this program has been provided by this station and other Public Television Stations and by grants from Exxon Corporation, Allied Chemical Corporation and the Corporation for Public Broadcasting.

WNET/WETA — Air Date: April 10, 1979

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* * *

[7] HAYNES: Well, it's too early to tell really, because what we have are the plans that have been submitted and accepted; implementation is another issue, and we haven't gotten to that right now. What's going on right now in most of the states is that legislatures are reviewing the plans in terms of the monetary aspects and whether or not they'll be able to fund it, because there's an enormous cost attached

to "desegregating" anything. And our concern, though, I would say that that state has impressed me in terms of its movement; they have only one historically black college there which is the University of Arkansas at Pine Bluff, and they have been able to get from the state not only a commitment but actual implementation of some programs and increases in their budget. So that the University of Arkansas at Pine Bluff can in fact be a representative member of the University of Arkansas system.

HUNTER-GAULT: But how about in terms of black colleges generally and desegregation plans? Do you have the same fears and concerns that these plans conceivably could lead to extinction of black institutions of higher learning?

HAYNES: Well, yes – you know, if one looks at the plans, you'll notice that the black colleges unfortunately been assigned, as I say, these roles that are remedial. There is a tendency of states to do what I call the comparability test: they compare the black college to the lowest white state institution when they start dealing with the question of duplication of programs, as opposed to what I think the comparison should be, and that is comparing the black college to the flagship institution, because as you know, black colleges were founded to be the flagship institutions for blacks. And the comparison, in terms of enhancement and strengthening, should be the black college being compared to, let's say, in North Carolina, Winston-Salem State being compared to the University of North Carolina at Chapel Hill or North Carolina State or East Carolina.

HUNTER-GAULT: All right. Mr. Tatel, let me come back to you with Dr. Stone's concerns that these guidelines possibly could lead to the extinction of black colleges. What do you say to that?

TATEL: Well. I think Dr. Stone's concerns are very real. And we, under the direction of the court, have tried to draft these standards in a way that protects black colleges. And major part of them requires the states to strengthen the black colleges by giving them new programs and by giving them adequate funding, by repairing and rebuilding their campuses, and by for the first time really in their histories giving them an opportunity to compete with white institutions.

* * * *

STATEMENT OF DR. DOLORES SPIKES ON ISSUES RELATING TO DESEGREGATION OF HIGHER EDUCATION

By: Dolores R. Spikes
January 30, 1989

1. Statement of educational background and qualifications

Certificate, Institute of Educational Management, Harvard University

Ph.D., Mathematics, Louisiana State University, National Science Foundation Fellow and Ford Foundation Fellow

M.S., Mathematics, University of Illinois at Champaign Urban, University of Illinois Fellow

B.S. Liberal Arts, Major in Mathematics, Southern University-Baton Rouge, LA, Summa Cum Laude

2. Statement of employment history

- President, Southern University System and Interim Chancellor, Southern University at Baton Rouge; Professor October 28, 1988 - present
- Chancellor, Southern University at New Orleans; Professor July 1, 1987 - October 27, 1988
- Executive Vice Chancellor and Vice Chancellor for Academic Affairs, Southern University at Baton Rouge; Professor – August 15, 1985 - June 30, 1987
- Assistant to the Chancellor, Southern University at Baton Rouge; Professor – January 1982 - August 14, 1985
- Assistant to the Chancellor (Part-Time) and Full-Time Professor Mathematics – August 1981 - December 1981
- Full time Teaching, from Assistant Professor through Professor, Southern University at Baton Rouge June 1964 - August 1981 (except for educational leaves)
- Teacher, Calcasieu School System September 1960 - May 1964

- Instructor, Southern University at Baton Rouge September 1958 - May 1959

* * *

[29] 5. c. (cont'd.)

- **Are the state's historically white colleges capable of replicating this result at this time?**

No! Historically white colleges are not capable of addressing the needs of black students because whites are socially and culturally deprived of understanding the needs, desires, abilities and mores of black students.

The historical missions of white colleges have not included the education of minorities and disadvantaged students. Thus predominantly white colleges are ill-equipped to address the special needs and problems of these students.

Most personnel at white colleges do not posses sensitivity and commitment to the education of minorities. Consequently, they do not feel the need to serve as role models and mentors to enhance the learning experiences of minority and disadvantaged students. In addition, minority students have been deliberately excluded from the mainstream of activities of predominately white institutions. This exclusion is evident in minority students' lack of participation in the social/cultural, political, and educational development of the total student. In fact, no effort has been made to ameliorate this increased ethnic friction which significantly interferes with the learning process.

FREEDOM & THE UNIVERSITIES

C. Vann Woodward

Illiberal Education: The Politics of Race and Sex on Campus

by Dinesh D'Souza.
Free Press, 319 pp., $19.95

Defending freedom under attack in universities invariably gets defenders into a variety of trouble. The attackers almost always profess devotion to free speech themselves - except when it is carried to extremes, or is used by fanatics to discredit a cause they believe to be of greater or nobler or more urgent importance, or when it gives offense or pain or distress to people with enough troubles already. Resort to one or another, if not several, of these exceptions will be made in almost any dispute over the limits of free speech. After all, it is only in such instances, at least as perceived by those who resort to these exceptions, that the issue of free speech is likely to rise.

* * *

[35] Universities that were once centers of civil rights activists and advocates of racial integration are now reported not only by D'Souza but by colleagues who have written to me and to such organizations as the American Civil Liberties Union to be places where instances of bigotry are frequent. Anomalies multiply with the number of racial tensions, incidents, and conflicts. The more liberal the tradition and the more deference to protest, the more incidents are reported. Seemingly the more policies to promote harmony the greater the perception and complaint of racial hostility. Offenses are not exclusively from one race, but are perceived as racial only when the victim is from a minority group. However defined, by far the greater number of racial incidents occurs at northern universities, with those in Massachusetts leading them all. It is doubtful that the tide of withdrawal of minority groups into segregated dormitories, dining halls, student unions, clubs, fraternities, sororities, and even to an extent into separate curriculums has promoted racial harmony. Yet university presidents have regularly welcomed, applauded, and financed such resegregations. President Harold Shapiro of Michigan (new president of Princeton) said he could not grant all black professors tenure, but as demanded by Jesse Jackson, he agreed to give

financial support to a new black student union and appropriated $27 million to increase minority faculty and student presence on campus.

* * * *

Testimony of Joe Reed
***Knight v. Alabama*, No. 83-M-1676-S**
(N.D. Ala. dated Feb. 12, 1991)

* * *

[133] Direct - Reed

* * *

Q. Are you familiar with generally the doctrine of separate but equal?

A. Yes

Q. What does that principle mean to you?

A. It meant that as it relates to state action, blacks and whites could be separated or segregated provided the facilities were equal. They could be separate, but the facilities must be equal.

Q. Did ASU at one time operate under that principle?

A. Alabama State University operated under the principle of separate but equal, but it wasn't equal, [134] because that was the law of the land, and that's one of the things I think that we ought to look at in this case and I think that we have a right to demand or to request, whatever term we want to use, as nice as we know how to say it, that the state of Alabama owes Alabama State everything it provided, everything it failed to provide Alabama State under the *Plessy versus Ferguson* doctrine, they owe us that now. There may be some redeeming value in *Plessy versus Ferguson*, we may be the first institution to get out of *Plessy versus Ferguson* today what the state of Alabama didn't give it yesterday, because if the state of Alabama had lived up to what *Plesssy versus Ferguson* commanded, which was the law at that time, separate but equal, Alabama kept its separate, but if it had made it equal, then Alabama State would have a medical school, it would have a law school, it would have all of these professional schools that the University of Alabama now has.

Now, while there are those who might argue that the state of Alabama didn't have this obligation, the law commanded it, that was the law of the land that these, that black schools or black people have the same facilities as whites have. And so we are entitled to under Plessy, for the fifty-four years that Plessy was in operation, the state of Alabama, the things it did not [135] provide us under the command of the law at that time should do so now.

Q. Mr. Reed, you claim that there are still vestiges of segregation and discrimination in higher education, do you not?

A. Yes.

Q. What should be done by the historically white institutions to do away with segregation?

A. They ought to employ some more black faculty, that's the first thing they ought to do. They ought to employ black administrators, more black personnel, so that these blacks who attend these schools can have some role models, they ought to employ some, that's one of the things they ought to do. They ought to take more responsibility in educating the disadvantaged.

Q. What should the state of Alabama do toward doing away with vestiges of desegregation?

A. You know, we have all been in this case for a long time, too long. This case, and I'm not speaking for the board of trustees now, I'm just giving my own opinion as to what ought to happen. Now, I don't think there is any question that the state of Alabama ought to bring Alabama State University and Alabama A & M University up to the standards and the status of the University of Alabama and Auburn. They ought to fulfil [sic] that mission and they ought [136] to carry out the intent of *Plessy versus Ferguson*. They ought to do that.

* * * *

TRIAL TRANSCRIPT
United States v. Alabama
No. 83-P-1676-S
(N.D. Ala. dated July 27, 1985)

* * *

[5330]

* * *

MR. CRENSHAW: Your Honor, as I understand our position, it's only that we do not challenge any use of the ACT as opposed to any particular use of the ACT tape.

MR. POWELL: I don't understand that.

THE COURT: The United States' position is not clear.

MR. CRENSHAW: Your Honor, we do not challenge the use of the ACT as a portion of the admissions formulation as opposed to the particular uses that are being made at the present time.

MR. POWELL: I don't understand that, Your Honor, we challenge it for purposes of examining this witness, but not really, that's what it sounds like.

MR. CRENSHAW: That's not what I said.

MR. CARRIGAN: Your Honor –

MR. POWELL: Well, the first question before – there are two questions, Your Honor, one is whether they have ever raised this position before. That is one question. But one question I have right now is are they raising it now? I'm not even sure from what counsel is saying that they are raising it not [sic]. The question is simply does the United States challenge the validity of the admission standards of the institutions in the state of Alabama in this case.

MR. CRENSHAW: Your Honor, this all arose out of a question where I was trying to ascertain the data that he used in the formulation of his expert opinion. I think we're entitled to inquire into what that data was.

THE COURT: I believe you're entitled to inquire of what the data was since that was the testimony presented, but I don't see any

statement in which the United States challenges the use of the ACT in this case.

MR. DOUGLAS: Your Honor, if I can make the record clear, the government is not challenging the use of the ACT as a part of the admissions process. We concede that point.

THE COURT: All right.

* * * *

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

KNIGHT, et al., and UNITED STATES OF AMERICA,

Plaintiffs and Plaintiff-Intervenors

v.

THE STATE OF ALABAMA, et al.,

Defendants.

CV83-M-1676-S

PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW SUBMITTED BY THE UNITED STATES [EXCERPTS ONLY]

* * *

[38] 130. The adoption of the ACT as an admission requirement to the historically white institutions was accomplished during a period when the State, the SBE, the historically white institutions and the state legislature were resisting and actively opposing the admission of black persons to historically white institutions. The circumstances surrounding the adoption of the ACT admissions policy, therefore, leads one to the inescapable conclusion that the desire to exclude blacks from historically white institutions and to thereby preserve the historical racial character of those institutions was a motivating factor in the policy's adoption and implementation in the State of Alabama.

* * * *

TESTIMONY OF EDWARD RUTLEDGE
***Knight v. Alabama*, No. 83-M-1676-S**
(N.D. Ala. dated May 31, 1990)

* * *

[194]Q. And can you identify Exhibit 2?

A. Yes, sir. Exhibit 2 is taken from the data set for fall of 1988. It reflects essentially the same statistics for that respective fall displaying the enrollments, total black enrollments in the state and then enrollments in the two historically black institutions.

Q. And so reading Exhibit 2, if I'm reading it correctly, 40 percent, 40.11 percent of black students attending public four year colleges in Alabama attended A&M or ASU, and 19.11 [195] percent of the black students attending college in Alabama were at A&M or ASU?

A. That's correct.

* * *

[196]Q. Let me ask you how many — looking at State's Exhibit Number 2, how many other public four year colleges are there in Alabama, other than Alabama A&M and Alabama State?

A. How many other public four year colleges?

Q. Yes.

A. There are 16 public colleges in the State of Alabama, public senior institutions, so there would be 14 without A&M and ASU.

Q. Would I be correct then in gathering from this exhibit that in 1988, approximately 40 percent of the black students attended Alabama A&M and Alabama State, those two institutions?

A. Of the public four year institutions, yes, sir.

Q. And of the other 14 colleges, 60 percent of the black students —

A. That's correct.

Q. So that's spread out among 14 colleges?

A. That's correct.

* * * *

DIRECT TESTIMONY OF MARVIN ROUBIQUE
[WITHOUT ATTACHMENTS]

Marvin Roubique is Assistant Commissioner for Finance of the Board of Regents and has served in that capacity since 1986. Prior to that time he worked in the state budget office for a period of 12 years, for the last five of which he served as Assistant State Budget Director. As Assistant Commissioner for Finance, Roubique has the primary staff responsibility to prepare the Board of Regents' budget, to review all budget requests from the institutions, to review the *Formula* annually, and to recommend changes thereon as necessary.

Most funding for higher education in Louisiana is provided under the *Formula*, a mechanism which generates funds based on student credit hours (SCH's), and generates funds for the function of operation and maintenance (including utilities). The number of SCH's is multiplied by the basic values in the *Formula*'s basic factor chart. (See Attachment A). SCH's are categorized according to the level of the student. Further, the SCH's are either low cost or high cost; high cost values are assigned those disciplines such as technology and engineering which generally have higher associated costs such as operation of laboratories. All institutions receive the same dollar value for the same course. For example, a freshman taking English at Southern University-Shreveport generates the same SCH dollars as a freshman taking English at LSU-Baton Rouge. The function of operation and maintenance is funded using a range of values based on utilization of the institutions' buildings. Utilities are provided based on the institution's consumption rate, history and a projected utility rate for the forthcoming year.

The *Formula* method is objective in nature. The collection of measurable data from the institutions permits the use of mathematical calculations. Actual SCH production from the prior academic year is used to generate *Formula* dollars. [2] Actual, not estimated, production drives a large portion of the *Formula*. This removes the need for a subjective evaluation and identifies the needs of all institutions in comparable terms. Equitable distribution of funds, and not necessarily equality, is the basic objective of the *Formula*.

The *Formula* contains a "hold-harmless" provision that no institution need request less than the current year's appropriation for

Formula purposes. This hold-harmless provision results in differing levels of *Formula* implementation among the institutions. If enrollment and subsequent student credit hour production decline, an institution is not penalized by a reduction in *Formula* dollars. The following are examples of the hold-harmless provision at work to the overall benefit of the PBIs: in 1981-82, the statewide average rate of implementation was 97.7%. In that same year Grambling's implementation rate was 118.7%, SUBR's rate was 106.5%, SUNO's rate was 100%, and SUSBO's rate was 95.3%. Among PWIs, LSU was implemented at 96.5%, and USL was implemented at 95.3%.

The *Formula* is a cost-based and goal-oriented document that is designed, at a minimum, to achieve the average appropriation per full-time equivalent ("FTE") student of other SREB states.

The *Formula* does not extend to the internal allocation of funds for any functional category, specific discipline, or program. The internal allocation necessary for development of an effective program at a particular institution of higher education remains the prerogative of that campus' administration and its governing board.

In 1986-87 the *Formula* generated substantially more dollars per FTE student for Southern University-Shreveport/Bossier than any other state institution. (See Attachment B). In the amount of overall state funding received per FTE student, [3] Southern-Baton Rouge, Grambling and Southern-New Orleans ranked fourth, fifth and sixth, respectively, out of 17 institutions of public higher education.

The *Formula* is currently undergoing review and will undoubtedly undergo further review in response to any plan ordered by this Court. It is premature to speculate at this time, however, how the *Formula* might be revised in relation to a plan whose parameters are unclear. The hold-harmless provision mentioned previously is one component that may be subject to change.

[The Board of Regents submits that the following testimony is irrelevant to the issue of remedy and should not be admitted. If, however, any party is permitted to introduce testimony concerning the level of funding received by the predominately black institutions under the Consent Decree, or the alleged underfunding of PBIs during those years, the Regents reserve the right to rebut such testimony. At a minimum the Regents would show as follows:

To supplement funding provided under the *Formula* and by student fees collected from the new students enrolled in the new academic programs, the Board of Regents has each year since 1982 recommended outside-the-*Formula* funding for the support of these programs. Ordinarily, when an institution implements a new academic program, it is required to support that program entirely from *Formula* and self-generated funds. However, the Regents recognized that the PBIs could not quickly and successfully implement the number of new programs prescribed by the Consent Decree without added support. It therefore recommended supplemental funding. In doing so, it attempted to develop programmatic budgets comparable to those of other public higher education institutions in the state. The Regents' recommendations were often lower, and sometimes substantially lower, than the predominately black institutions' requests. The most common disagreements between the Regents and the PBIs related to the number of administrators, faculty, and staff [4] required for a new program, and the salaries of employees. In 1982-83, the legislature appropriated $685,210 in outside-the-*Formula* funds to predominately black institutions for new academic program support; it appropriated $3,457,343 in 1983-84; $6,641,742 in 1984-85; $11,581,220 in 1985-86; $12,793,859 in 1986-87; and $13,011,782 in 1987-88. Also included is an amount of $284,986 to Grambling for help in operation of their physical plant; $2,964,112 for the Off-Campus Center at Southern University-Shreveport/Bossier City; an amount of $3,745,409 has been appropriated to Southern University-Baton Rouge for operation of the Center for Small Farm Research; an amount of $231,444 was appropriated to Southern University-Shreveport/Bossier City for their Management Information System; and $516,449 was funded for administrative positions at Southern University-Shreveport/Bossier City. Although the Consent Decree terminated on December 31, 1987, the Board of Regents recommended continued funding of $15,186,520 for these new academic programs and other program support in 1988-89. Ultimately, $14.8 million was appropriated and the institutions were permitted to determine the allocation of those funds among the Consent Decree programs. Although the Board of Regents had not recommended that any additional funds be appropriated to developmental education, the PBIs allocated a portion of their 1988-89 Consent Decree funds to

those programs. A list of the special appropriations for predominately black institutions from 1982-83 through 1987-88, as well as actual expenditures, appears as Attachment D. The Board's recommended funding and the institutions' allocations of their 1988-89 funding appears as Attachment E.

The outside-the-*Formula* funding recommended by the Regents and appropriated by the legislature for Consent Decree programs was, in comparison to the funding provided in the same years to other Louisiana institutions, extremely generous. Comparisons among a few programs are illustrative:

[5] A. LSU-BR has masters level and baccalaureate programs in Criminal Justice. In 1986-87, LSU reported that its total expenditures for both the master's and baccalaureate programs, in which 216 majors were enrolled, were $291,445. By comparison, Grambling had 49 majors enrolled in its graduate program in fall, 1987. For the graduate program alone Grambling's 1986-87 budget cuts Grambling expended $295,952, more than LSU spent for more than four times the students at two levels of instruction.

B. LSU-BR has a master's program in Social Work. In 1986-87, LSU reported that its total expenditures for the program, in which 248 students were enrolled as majors, were $786,755. In 1987 Grambling had 45 majors enrolled in its M.S.W. program. Its budget request for 1986-87 was $1,439,275. After the budget cut it expended $633,233 for instruction of less than one-fifth the students enrolled at LSU-BR.

C. Southeastern has a School of Nursing, in which approximately 677 majors were enrolled in 1986-87. Its total program expenditures for that year were $903,751. In that year, SU-BR had 63 majors enrolled in its Nursing program, for which it requested $909,723, more than Southeastern's budget for ten times as many students; SU-BR expended $464,795 after the budget cuts. Grambling, which had 457 majors in its Nursing program, requested $728,308 in 1986-87 and expended $579,564 after the cuts.

D. Northwestern was reported to have three baccalaureate programs in Industrial Technology. In fall 1987, 99 majors were enrolled and its expenditures for the three programs totalled $117,953 that year. SUNO has a similar B.S. in Technology, in which 6 majors

were enrolled in fall, 1987. SUNO requested $577,052 for its program that year and expended $299,012 in 1986-87.

[6] As shown on Attachment E, the appropriations for the Consent Decree programs often exceeded the PBIs expenditures; but the institutions frequently did not expend the full amount appropriated by the legislature on the programs they are now contending were underfunded.

Other areas of increased financial support for the PBIs were as follow:

1) Prior to the Consent Decree the Board of Regents had recommended parity funding between the Southern Law School and the Paul M. Hebert Law Center. In 1983, the Board of Regents amended the *State Appropriation Formula* to include a parity mechanism. Additionally, from 1982 through 1987 the state provided additional funds in the amount of $285,000 per year to Southern University for enhancement of its law school.

2) From 1982 through 1987 the legislature additionally appropriated $1,000,000 per year for the enhancement of predominately black institutions; the enhancement funds were distributed as follows: $373,000 annually to Grambling State University and $627,000 annually to the Southern University System.

3) Each fiscal year from 1982-83 through 1987-88 the Board of Regents recommended $70,000 to Grambling State University and $230,000 to the Southern University System for faculty development. The purpose of this program was to provide advanced educational opportunities for faculty members at Louisiana's predominately black institutions. Faculty members who lacked the terminal degree were given the opportunity to take paid leaves of absence in order to obtain their terminal degrees. Total appropriations for this program were $1,793,100.

4) Substantial investments in capital outlay, to be addressed by other witnesses in this proceeding if deemed relevant.

5) Each year, the Board of Regents recommended to the Governor and the legislature that additional monies be appropriated to the predominately black [7] institutions for other-race recruitment as follows: Southern University-Baton Rouge - $143,294; Southern

University-New Orleans - $50,095; Southern University-Shreveport - $26,000; Grambling State University - $99,000. The legislature annually appropriated the necessary funds for other-race recruitment activities of the predominately black institutions from 1982 through 1987.

An Analysis of the Funding of Predominantly White and Predominantly Black Public Institutions of Higher Education in Louisiana 1981-82 and 1987-88

Lucie Lapovsky
July, 1988
[Without Attachments]

Introduction

The issue to be examined is whether Louisiana has provided an appropriate level of funding to its four predominantly black institutions (PBI's) since signing the consent decree with the U.S. Department of Justice. To examine this issue, 1981-82 will be used as the base year for analysis as it is the year prior to the beginning of the consent decree funding.

The Louisiana formula will be used as a standard against which to measure the adequacy of funding for each institution. In 1981-82, the PBI's were funded at 93.8 percent of the formula compared with 80.6 percent at the PWI's. The PBI's were relatively better funded than the PWI's in 1981-82. Comparisons to the base year will be made using the latest available data, 1987-88 whenever possible. An assessment of the adequacy of the funding for the consent decree programs will also be made. The primary data source is the Board of Regents.

Comparative Funding

In order to assess Louisiana's funding of higher education during this period, it is useful to put it in a context relative to higher education funding in the country. In 1985-86, Louisiana ranked 28th in appropriations per capita in State tax funds for operating expenses for higher education (see Table 1). This was one percent below the national average. Louisiana fell to 38th in 1987-88, fifteen percent below the national average. Between 1985-86 and 1987-88, State appropriations for higher education in [2] Louisiana declined by five percent compared with an increase of 11 percent in the United States as a whole (see Table 2). In 1985-86, Louisiana ranked 32nd in revenues per student from State and local appropriations at public

institutions. This was nine percent below the national average (see Table 3). Since 1985-86, funding in Louisiana has declined relative to the national average so that its relative rank is even lower today. Between 1981-82 and 1987-88, average salaries of full-time faculty in public institutions in Louisiana have increased 13.6 percent compared with the national average of 41.7 percent (see Table 4). Among the fifteen SREB states, faculty salaries ranked third in the region in 1981-82 and 14th in 1987-88.

In this context of declining support over this period of time and a relatively low absolute level of support for higher education in Louisiana, I will examine the funding of the predominantly black institutions and compare it with the funding of the predominantly white institutions. I will examine State funding in a variety of ways as well as review several indicators that reflect the adequacy of funding for the various institutions. I will first make aggregate comparisons among all institutions, and then I will make comparisons among and between comparable institutions.

Enrollment

In 1981-82 Louisiana had 115,889 full-time equivalent students (FTES). Enrollment increased 1.7 percent to 117,842 in 1987-88 (see Table 5). In 1981-82, 12.9 percent of the total [3] enrollment was in the PBI's; by 1987-88, 14.4 percent of all Louisiana's enrollment was in the PBI's. Enrollment during this period grew by more than 30 percent at two of the PBI's, Grambling and Southern-New Orleans. Enrollment declined 4.5 percent and 4.1 percent respectively at the other two PBI's, Southern-Baton Rouge and Southern-Shreveport.

Clearly the PBI's were becoming more attractive during this period as evidenced by the fact that they were attracting a relatively larger share of the enrollment at Louisiana public institutions. All of the growth in enrollment between 1981-82 and 1987-88 is attributable to the PBI's.

State Appropriations

Louisiana appropriated $418.1 million for higher education in 1981-82 and $466.3 million in 1987-88, an increase of 11.5 percent

(see Table 6). In 1981-82, the PBI's received $45.5 million or 10.9 percent of the total state appropriation. In 1987-88, the PBI's received $59.8 million or 12.8 percent of the total appropriation. During this period, State appropriations at the PBI's increased 31.3 percent compared with 9.1 percent at the PWI's. There is very little difference in our conclusions if we analyze the change in State appropriations to PBI's and PWI's including or excluding the category labelled "Other" on Table 6. "Other" includes the System Boards, the Ag. Center, and the Medical Center. During this period there has been a significant increase in the Medical Center funding, 20.4 percent. The Ag. Center's funding has increased only 4.1 percent. Funding for both [4] the LSU-Board and Trustees-Board has declined by more than 20 percent each while funding for the Southern Board has increased by 48.9 percent.

State appropriations per FTES averaged $2701 in 1981-82 compared with $2953 in 1987-88, an increase of 9.3 percent (see Table 7). State appropriations per FTES averaged $2967 at the PBI's in 1981-82 and $3436 in 1987-88, an increase of 15.8 percent. State appropriations per FTES averaged $2662 at the PWI's in 1981-82 and $2872 in 1987-88, an increase of 7.9 percent. State appropriations per FTES at the PBI's were 11.5 greater than the State appropriations per FTES at the PWI's in 1981-82 and increased to 19.6 percent greater by 1987-88.

The State in its funding decisions between 1981-82 and 1987-88 clearly favored the PBI's as compared with the PWI's. The PBI's increased their relative share of the State's higher education spending. In addition State funding per FTES increased more than twice as much at the PBI's as compared with the PWI's during this period.

The Formula

Description

Louisiana uses a formula to establish the base level of funding for all of its institutions of higher education. The formula is similar to that used in many states throughout the country (BOR, State Appropriation Formula, 1988). It has a set of dollar values per credit hour with the rates varying by student level and by type of academic

program. The formula also has [5] factors for utilities and operation and maintenance of the physical plant. The formula includes a hold harmless provision which provides that an institution will not receive less than its formula allocation from the prior year. The majority of funds in the formula is derived from the instruction component; therefore, my analysis will be limited to that.

Table 8 provides the basic factor chart for 1981-82 and 1987-88. The values per credit hour in 1981-82 ranged from $51.12 for lower cost, lower level undergraduates to $700.40 for higher cost, doctorate credit hours. In 1987-88 the credit hour values ranged from $58.33 for lower cost, lower level undergraduate credit hours to $1751.27 for lower cost, doctorate credit hours. Between 1981-82 and 1987-88, the value of all credit hours increased except lower cost Masters which declined 11.0 percent (see Table 9). The greatest increases occurred in the value of Pharmacy Masters credit hours and doctorates. In 1981-82, higher cost doctorate credit hours had a value 13.7 times greater than lower cost, lower level undergraduate credit hours (see Table 10). In 1987-88, higher cost doctorate credit hours were valued at 30 times lower cost, lower level undergraduate credit hours. When one examines the formulas in other states which use a matrix similar to Louisiana's, the range between types of credit hours varies considerably but is often as great as Louisiana's range. In Maryland, the range is 1 to 40. The formula should be used as a standard against which to measure the relative adequacy of funding at each public institution in Louisiana.

[6] Application of the Formula

In 1981-82, Louisiana institutions subject to the formula received $298.1 million in funding through the formula, 95.2 percent of their total funding from the State (see Table 11). The PBI's received 91.5 percent of their total funding from the formula while the PWI's received 95.9 percent of their funding via the formula. The formula was funded at 82.2 percent of its value with the PBI's funded at a significantly higher percent of the formula than the PWI's, 93.8 percent compared with 80.6 percent at the PWI's.

In 1987-88, Louisiana institutions subject to the formula received $296.7 million in funding through the formula, 85.2 percent

of their total funding. In 1987-88, 15 percent of higher education funding came for [sic] special purposes compared with less than five percent in 1981-82. The PBI's received 69.5 percent of their total funding from the formula while the PWI's received 88.4 percent of their total funding from the formula. The significant difference in dependence on the formula for funding is the consent decree funds at the PBI's.

In 1987-88, the formula is funded at 66.5 percent with the PBI's funded at 73.4 percent while the PWI's are funded at 65.5 percent. Both PBI's and PWI's received slightly fewer formula dollars from the formula in 1987-88 than in 1981-82. Had the formula been funded at 100 percent of its value, the PBI's would have received 26.9 percent more in formula dollars in 1987-88 compared with 1981-82 while the PWI's would have received an increase of 22.5 percent.

[7] In 1981-82, full funding of the formula would have provided $3130 per FTES with an average of $2896 at the PBI's and $3165 at the PWI's (see Table 12). The difference in funding between the PBI's and PWI's at full funding is attributable to the difference in the distribution of credit hours. In 1981-82, no doctoral credit hours were offered at PBI's and only 6.5 percent of the credit hours at the PBI's were at the graduate level while 66.6 percent of all the credit hours at the PBI's are lower level undergraduate (see Table 13). By comparison, 9.4 percent of the credit hours at the PWI's are at the graduate level with 0.6 percent doctoral. Only 55.3 percent of the credit hours are at the lower level undergraduate.

By comparison, in 1987-88 only 61 percent of the credit hours at the PBI's were lower level undergraduate, a reduction of 8.5 percent in the distribution of credit hours (see Tables 14 and 15). The distribution of credit hours at the PBI's increased by 21.1 percent at the upper level undergraduate level compared to an increase of 8.4 percent at this level for the PWI's. In absolute terms, the percent of credit hours at all levels at the PBI's increased while at the PWI's they increased only at the upper level undergraduate and doctorate levels (see Table 16). While credit hours at the doctorate level at the PWI's doubled between 1981-82 and 1987-88, they accounted for only 1.3 percent of the total credit hours at the PWI's in 1987-88.

Given the deterioration in the fiscal situation in Louisiana during this period, relative levels of funding for higher education fell. The PBI's continued to be funded at a higher [8] percent of the formula than the PWI's. Using the formula as the standard, the PBI's were relatively better funded than the PWI's in both 1981-82 and 1987-88.

Faculty Salaries and Student Faculty Ratios

In 1987-88, Louisiana had 5,248 full-time faculty who received an average salary of $29,925 (see Table 17). The average student/faculty ratio was 22.5:1 full-time equivalent students to each full-time faculty. The average faculty salary at the PBI's was $27,354 with a 17.3 to 1 student faculty ratio. At the PWI's, the average salary was $30,512 with an average student faculty ratio of 23.6 to 1.

Given the level of resources the PBI's devoted to full-time faculty (more than $26 million), they could pay the same average salary as the PWI's and still have a student faculty ratio below that of the PWI's, 19.3 to 1. Alternatively, the PBI's could pay an average salary of $37,235, 22 percent above the average at the PWI's and have the same student faculty ratio as the PWI's.

Decisions concerning number of faculty and faculty salaries are institutional decisions. The PBI's have chosen a more labor-intensive use of their resources than the PWI's. The State has provided more resources to the PBI's than the PWI's for faculty. Therefore, the PBI's could operate with a higher average salary than the PWI's and a lower student/faculty ratio.

[9] Comparative Institutions

Comparisons of financial data of institutions can only legitimately be made among institutions with similar roles and missions. Because of economies of scale, comparisons should also only be made among institutions with similar numbers of students. In order for funding to be equitable among comparable institutions, similar amounts should be appropriated for comparable institutions. A complete discussion of the legitimacy of institutional comparisons can be found in Frank Schmidtlein's paper "A Critique of the Report Prepared by Dr. Larry L. Leslie, Dated March 23, 1981", May 22, 1981.

In Dr. Leslie's report "An Analysis of Financial Equity Between Predominantly Black and Predominantly White Louisiana Institutions of Higher Education and of Consent Decree Funding, 1979-1988" dated June, 1988, he states that

> Comparisons are made of Southern University and Louisiana State University, and then of Grambling versus Louisiana Tech and other Board of Trustees Institutions. These two comparisons are separate because Southern and LSU are held to be comparable institutions, in that campuses of each institution were established in several cities as black-white counterparts. Grambling and Tech are compared largely because Tech is the institution nearest to Grambling. (p.3)

Nowhere in the literature have I found geographical location of an institution or historical development of an institution as important characteristics to use as an appropriate basis for [10] financial comparisons. Leslie goes on to raise the issue of mission equivalence. Nowhere in the consent decree is there any indication that the court wants to replicate LSU-BR at SO-BR. In the award of new academic programs to the PBI's in the consent decree, there are only four new doctoral programs, one at Grambling and three at SO-BR, proposed for development. It has never been the intent to develop another comprehensive research university in Louisiana.

We now must ask can we make any valid cost comparisons between any of the PBI's and PWI's in Louisiana. Characteristics which I will examine to identify comparable institutions are enrollments, distribution of credit hours by level, and number of academic program majors. Information also is provided on other institutional characteristics (see Tables 18-21). These are basic characteristics which can be reviewed to ascertain if an institution will have similar resource requirements.

Enrollments tend to allow institutions to operate more efficiently up to a certain point. Certain economies of scale result to larger institutions which make cost comparisons of institutions of significantly different sizes illegitimate. The distribution of credit hours by level also has financial implications. As seen from all of the states which use formulas, it is assumed that undergraduates require fewer

resources to educate than graduate students. Further, lower level undergraduates can be educated for less money than upper level undergraduates. A third measure which is reviewed is number of [11] academic program majors. This is an indicator of institutional complexity. In making resource comparisons, you also would want to compare institutions with a similar array of academic programs. It is known than certain types of academic programs, laboratory-intensive programs, require more resources than lecture-intensive programs. Therefore, an institution with a high percent of its students taking science courses will be more expensive to operate than an institution which concentrates on business courses. Equity would require the institution which is science-intense to have a higher level funding than the institution which is business-course intense.

First, I will search for a peer or peers from among the PWI's for Grambling. The first characteristics to examine is enrollment because comparable institutions must be of a similar size for financial comparisons.

Differences from Grambling

	FTES	Number	%
Grambling	5,440		
Northwestern	4,594	(846)	(15.6%)
McNeese	6,347	907	16.7
Nicholls	6,247	834	15.3
Delgado	4,515	(925)	(17.0)

The above institutions are the only PWI's in Louisiana within 20 percent of Grambling's enrollment. The credit hours at these institutions are distributed in different fashions which will make some of the institutions noncomparable with Grambling.

[12] Percent Distribution of Credit Hours

	Undergraduate	Graduate
Grambling	95.4%	4.5%
Northwestern	91.2	8.8
McNeese	92.1	8.0
Nicholls	94.6	5.5
Delgado	100.0	0.0

Delgado falls out at this point since all of its credit hours are lower level undergraduate. The institution most similar to Grambling in terms of distribution of its credit hours is Nicholls. Grambling has 95.4 percent of its credit hours at the undergraduate level and Nicholls has 94.6 percent (see Appendix A). Grambling has 4.5 percent of its credit hours at the graduate level and Nicholls has 5.5 percent. Northwestern and McNeese have 8.8 percent and 8.0 percent respectively of their credit hours at the graduate level. A review of the program inventory indicates that Grambling offers programs in 38 major fields of study while Nicholls offers 34 majors. Although Nicholls is the most similar Louisiana institution to Grambling and direct comparisons will be made between the two, Nicholls and Grambling certainly have differences between them.

To ascertain if there is a peer or peers for Southern-Baton Rouge, I will select those institutions with similar enrollments.

Difference from SO-BR

	FTES	Number	Percent
SO-BR	8,174		
LA. Tech	9,125	951	11.6%
Northeast	9,303	1,129	13.8
Southeastern	6,885	(1,289)	(15.8)

[13] Louisiana Tech with 9,125 FTES, Northeast with 9,303 FTES, and Southeastern with 6,885 FTES are the only Louisiana institutions which are within 20 percent of SO-BR's enrollment. The credit hours at these institutions are distributed in different fashions.

Percent Distribution of Credit Hours

	Undergraduate	Graduate
SO-BR	90.9%	9.1%
La. Tech	92.9	7.1
Northeast	93.2	6.8
Southeastern	95.7	4.3

The distribution of credit hours at SO-BR is most similar to La. Tech and Northeast. SO-BR offers 111 academic programs and 43 different major fields while La. Tech has 134 academic programs with 50 major fields and Northeast has 113 academic programs with 49 fields. SO-BR has one doctoral program while La. Tech has five, Northeast has one and Southeastern has none. SO-BR has one specialist degree program, La. Tech has two, Northeast four and Southeastern two. Given these similarities, direct comparisons will be made among SO-BR, La. Tech and Northeast. Southeastern is eliminated since it has no doctoral programs and has significantly fewer graduate students than SO-BR.

The only institution of a similar size to Southern-New Orleans is LSU-Shreveport. SO-NO has 2700 FTES and LSU-S has 2,868 FTES. SO-NO has 96.5 percent of its credit hours at the undergraduate level while LSU-S has 93.8 percent of its credit hours at the undergraduate level. Neither institution has [14] any doctoral programs. SO-NO has 51 programs while LSU-S has 47. SO-NO has only one graduate program while LSU-S has six graduate programs. SO-NO offers programs in 25 major fields and LSU-S in 22. It is clear there are similarities between these two institutions and therefore direct comparisons will be made.

There is no institution in Louisiana with an enrollment close to Southern-Shreveport with its 609 FTES. Therefore no direct comparisons will be made between SO-S and other Louisiana institutions.

Direct comparisons will be made among these similar institutions. These comparisons are legitimate as the roles and missions of these institutions are comparable.

Grambling and Nicholls

Grambling is a campus which has grown from 3707 FTES in 1981 to 5440 FTES in 1987, an increase of 46.7 percent. During this same period State appropriations increased 44.1 percent just about equal to the rate of growth in students (see Table 22). The growth in resources commensurate with the growth in enrollment means that in real terms Grambling has much greater resources per student than it did in 1981. This is attributable to the fact that until the point where you encounter diseconomies of scale, the additional or marginal cost of another student is less than the cost of the last student. Diseconomies of scale occur when an institution grows so large, probably in excess of 25,000 or 30,000 students, although there is no agreement on the correct number, that the addition of another student will require changes in the [15] institution's operations such that the cost of that additional student is greater than the cost of the previous student. Grambling is certainly nowhere near such an enrollment level. Grambling enjoyed a period during which it could increase the efficiency of its operation.

Grambling and Nicholls have grown to be similar during this period. In 1981 Nicholls had 6027 students, almost twice Grambling's enrollment. Nicholls' enrollment has increased only 4.1 percent during these six years to 6274.

The formula, when fully funded, would provide Grambling with $2744 per student and Nicholls with $3026. The reasons that the formula legitimately would provide a higher level of resources to Nicholls is that it has a higher percent of its undergraduate credit hours at the upper division than Grambling, 38 percent versus 33 percent, and a lower percent of low cost credit hours, 66 percent versus 72 percent.

Because Grambling grew rapidly at a time of severe resource shortages in Louisiana, its formula funding fell from above 100 percent to 69 percent of the formula. Nicholls also experienced a decline in the percent of the formula which was implemented from 79.6 percent to 75.6 percent.

In 1987-88, Grambling received $3051 per student from the State while Nicholls, a very similar institution, received $2408 per

student, 21 percent less per student than Grambling. At full implementation of the formula, Nicholls should receive 10 percent more than Grambling.

Average faculty salaries are within two percent of each [16] other. Grambling is using its resources to operate at a significantly lower student-faculty ratio than Nicholls; 20.5:1 versus 25.5:1. The two institutions have similar size libraries which gives Grambling almost ten percent more books per student than Nicholls.

Grambling's level of total State funding gives it resources to operate at a level which is 11 percent in excess of full funding of the formula. Nicholls is operating at a level which is more than 20 percent below the formula.

Clearly the State has favored Grambling relative to Nicholls in its funding decisions. Grambling received $643 more per FTES in 1987-88 from the State than Nicholls. The formula, the standard for equitable allocation of resources among institutions, would provide $282 more per FTES at Nicholls as compared with Grambling.

Southern-Baton Rouge, Louisiana Tech and Northeast

These are three institutions which have experienced only modest changes in enrollment in the last six years. Enrollments at SO-BR and La. Tech have fallen 4.5 percent and 7.4 percent respectively, while Northeast's enrollment increased 2.5 percent (see Table 23). In terms of distribution of credit hours, SO-BR has changed to be much more like its comparable institutions with a significant change in the distribution of undergraduate credit hours between lower division and upper division. In 1981, more than 67 percent of SO-BR's credit hours were lower division whereas in 1987 only 53 percent were.

[17] The similarity among the institutions can be seen in the level of resources full funding of the formula generates; $3,622 per student for SO-BR, $3631 for La. Tech and $3439 for Northeast. The formula is implemented at 73.6 percent for SO-BR and less than 70 percent for the other two campuses. SO-BR received $2667 per student from the formula in 1987 while La. Tech received $2471 and Northeast $2386. The disparity in funding these campuses grows when you look at total

State dollars per student. SO-BR received $3535 per student, 33 percent more than La. Tech and 41 percent more than Northeast.

Southern-Baton Rouge has used these resources to fund a large library and a very low student-faculty ratio among other things. SO-BR has almost twice the library books of the other two campuses. SO-BR is operating with a student/faculty ratio of 15.7:1 while La. Tech has 21.3:1 and Northeast has 23.6:1. The faculty salaries for the all ranks average are $28,197 at SO-BR compared with $30,209 at La. Tech. If SO-BR chose to pay the same salaries as La. Tech, it would have to increase its student/faculty ratio to 16.8:1, still substantially below its comparison institutions.

SO-BR is receiving State funds which provide it with resources to operate which are within 2.5 percent of full funding of the formula. On the other hand, the resources provided to La. Tech and Northeast are 27 percent below the amount required by the formula.

The State has provided SO-BR with considerably more funding than Louisiana Tech and Northeast. SO-BR has $876 more in State [18] funds per student than La. Tech and $1023 more per student than Northeast. This is a *very* significant funding difference.

Southern-New Orleans and LSU-Shreveport

SO-NO and LSU-S are similar in enrollment size and both are predominantly undergraduate institutions. SO-NO has increased its enrollment 30.5 percent since 1981 while LSU-S has grown only 7.1 percent (see Table 24). State appropriations have grown 28 percent at SO-NO from $6.4 million in 1981-82 to $8.1 million in 1987-88. By comparison, State appropriations at LSU-S have increased only 5.5 percent and are 11 percent less than the appropriation at SO-NO.

Full funding of the formula generates $2869 per FTES at SO-NO and $3291 at LSU-S. The difference is understood in large part by the difference in the distribution of undergraduate credit hours. At SO-NO, 75 percent of the undergraduate credit hours are lowest level whereas at LSU-S only 51 percent are lower level. The formula provides between 40 and 70 percent more for upper level undergraduate credit hours than lower level undergraduate credit hours.

The formula was implemented at 73.4 percent and 75.2 percent at SO-NO and LSU-S respectively in 1987-88.

In 1987-88, SO-NO received $3013 per FTES in State appropriations, 19.5 percent more than LSU-S which received $2522. The total State appropriations provided SO-NO with funds five percent greater than full funding of the formula while LSU-S received State appropriations more than 20 percent less than full funding of the formula. SO-NO received significantly more dollars [18] per student from the State than LSU-S.

Southern-Shreveport

SO-S had an enrollment of 635 FTES in 1981-82 and 609 FTES in 1987-88. All credit hours are lower level undergraduate. SO-S received $7410 in State appropriations per FTES in 1987-88, more than 2.5 times the average level of appropriations and almost twice the amount received by LSU-BR, the major research university. According to the most recent data published by the National Center for Education Statistics, the average level of State *and* local appropriations at public two year institutions was $3050 in 1985-86 (SHEP, 1988, Table P).

Consent Decree Guidelines

The Louisiana Board of Regents has promulgated a set of guidelines for consent decree budget requests. The PBI's may request consent decree funds for any of the new programs/activities included in the consent decree. The BOR has developed guidelines for consent decree budget requests. The guidelines provide a teaching load for graduate faculty of nine hours and twelve hours for undergraduate faculty. This is the standard used throughout the country. The guidelines recommend an average section size of 20 per class graduate and 27 per class undergraduate. This is somewhat on the high side especially for laboratory-intensive subjects.

The consent decree guidelines provide parameters to request operating funds, equipment, capital outlay items and [20] assistantships. Most of these items are to be zero-based and justified on need. Certain percents of salaries or program budget are recommended for supplies and operating services in 1987-88 guidelines. The recommended percents are similar to the expenditures for these items at institutions throughout the country.

The guidelines allow for deviations from these recommended parameters with justification. It is clear that the BOR has allowed deviation from the guidelines as many of the consent decree program budgets reflect student/faculty ratios far below the guideline. For example at Grambling the Public Administration program received 3.5 faculty for 20 students in 1986-87 and the BOR is recommending 4.5 faculty for a projected 35 students for 1987-88. This number of faculty will provide the program with a 7.8:1 student/faculty ratio in 1987-88. A review of consent decree budgets indicates that student/faculty ratios significantly below the guideline level are the rule rather than the exception.

Further evidence that most consent decree programs are operating significantly in excess of the guidelines can be seen from the level of funding these programs are receiving. Overall, the consent decree programs received an average $4527 per full-time equivalent student from consent decree funds in 1987-88 (see Table 25). In addition, students in consent decree programs are counted in the formula. The PBI's received an average of $2387 per FTES from the formula. Therefore, students in consent decree programs were funded at an average rate of $6914. This is more than double the average level of State funds per FTES at all Louisiana [21] institutions in 1987-88.

At Grambling, SO-BR and SO-NO there are 26 consent decree programs in this analysis. Twenty-three of these programs have received funding for five years and eighteen for six years. Five years is generally more than sufficient to fully phase-in bachelors and doctorate programs since it provides time to graduate a class. Less time is required to phase-in associate and masters degree programs. After phase-in of an academic program, full funding of the Louisiana formula amount combined with the tuition collected from the students in the program should provide sufficient resources for operation of the program. Louisiana continues to provide consent decree funds for programs which have been in operation for more than five years.

In Clifton Conrad's paper "A Study of Academic Programs in Louisiana's Public Colleges and Universities: A Report for the U.S.

Department of Justice," June 29, 1988, he identifies ten out of the 26 consent decree programs at Grambling, SO-BR and SO-NO as "most developed." It should be noted that the average level of funding per student in these "most developed" programs is $4431, 5.6 percent less than the average level of funding for all the consent decree programs at these institutions. Therefore, the "less developed" and "least developed" academic programs received a higher average level of funding at Grambling, SO-BR and SO-NO than the "most developed" programs.

The PBI's receive formula funds plus consent decree funds plus tuition for all students enrolled in consent decree programs. This allows the consent decree programs to operate at the level of [22] resources significantly in excess of full-funding of the formula. Full funding of the Louisiana formula would provide the PBI's with $3251 in 1987-88; the consent decree programs are funded 39.2 percent in excess of the formula amount if one just looks at the consent decree funds. Attributing consent decree funds and formula funds to the consent decree programs provides funding for the consent decree programs which is more than twice the amount required when the formula is fully funded.

Louisiana has been extremely generous in its funding of consent decree programs. It is not only providing a generous level of funding in 1987-88, but Louisiana has provided this funding for five years or more for more than half of all the consent decree programs and more than 85 percent of the programs at the four-year institutions.

Conclusions

The PBI's have been funded at a higher percent of the formula than the PWI's in both 1981-82 and 1987-88. The PBI's have received a larger percent of funds from outside of the formula in both 1981-82 and 1987-88 than the PWI's.

In reviewing the direct comparisons among/between institutions, the PBI always received more State dollars per student than the comparable PWI. In 1987-88 Grambling received 26.7 percent more than Nicholls. SO-BR received 32.9 percent more than La. Tech and

40.7 percent more than Northeast. SO-NO received 23.8 percent more than LSU-S.

Overall, the PBI's received $3436 per full-time equivalent [23] student compared with $2872 per FTES at the PWI's from State appropriations in 1987-88. Consent decree funding averaged $4527 per FTES in 1987-88, substantially more than full-funding of the formula. The total level of State funding received by the PBI's in 1987-88 was equivalent to funding at 105.7 percent of the formula. Therefore, if Louisiana is able to fully fund its formula in the future, the PBI's, with fully phased-in consent decree programs, should have adequate resources. The formula provides an equitable means to distribute funds among institutions and at full funding provides a reasonable level of State funds.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN F. KNIGHT, JR. et al.,

Plaintiff, intervenors,

UNITED STATES OF AMERICA,

Plaintiff;

vs.

THE STATE OF ALABAMA, GUY HUNT;
THE ALABAMA STATE BOARD OF EDUCATION, WAYNE TEAGUE, et al.,

Defendants.

CIVIL #83 M 1676 S

Testimony of **Dr. James H. Wharton** reported April 2, 1991, before the Hon. Harold L. Murphy in Birmingham, Alabama.

REPORTED BY:
Martha J. Frutchey
U.S. District Reporter
P.O. Box 6036
Rome, Georgia 30161
(404) 234-7180

Dr. James H. Wharton 4/2/91

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* * *

[98] Direct - Wharton

* * *

Q. This morning you indicated to the Court that you [99]had played a role in the development and implementation of the Louisiana Title VI consent decree that went into effect in 1981. You recall that testimony?

A. Yes, I do.

Q. Can you give us a brief summary of the provisions of that consent decree as they related to the development of academic programs and capital construction?

MR. BLACKSHER: Your Honor, I don't object except to, of course, refer the Court to the actual document to the extent this characterization is inconsistent with the document, itself, which I believe is reported.

MR. LEVIN: This is only to set up a question so that the witness can offer an opinion as to the effectiveness of the remedies employed.

THE COURT: All right. Well, I'll let him proceed, bearing in mind Mr. Blacksher's comments, so I'll permit it for the purpose of allowing him to then give some conclusion, if that's what you're seeking.

MR. LEVIN: Yes, sir.

A. Please recap for me exactly what you want.

Q. I'm interested in your providing a brief summary to the Court of the provisions of that consent decree as they related to the expenditure of funds for academic program development and for capital construction.

A. The consent decree consisted of about seven [100] different components. The major component of the consent decree consisted of the fact that the predominantly black institutions would receive funding above and beyond the Louisiana formula to initiate new academic programs in order to enhance the other race enrollments at those four institutions.

The institutions involved were Southern University-Baton Rouge, Grambling State University, Southern University in Shreveport and Southern University in New Orleans.

Initially there was some 62 academic programs that were to be implemented.

Q. Now, was there an amount — strike that.

Of the 62 programs that were to be implemented, how many were eventually implemented?

A. Okay, one program was withdrawn based on the decision that it wasn't going to work out. Another program, the doctorate of professional accountancy at Southern University, a request was made on that program to change it to a doctorate, a Ph. D. in accounting and that change was concurred upon, but Southern never submitted the plans to implement that particular program. So, in essence, essentially all of the programs were ultimately implemented except for two programs.

The expenditures on the programs over the life of [101] the consent decree consisted of some total expenditure of 76 million, 75 million dollars. That was the operating budgets of the programs. In addition to that, there was a capital construction program, the board of regents brought in consultants.

Q. You said the board of regents brought in consultants. When did they do that?

A. In 1981. And a review was made of those campuses, and based on the recommendation of the consultants, there was a need to expend about 55 million dollars to enhance the four campuses.

The regents incorporated that into their capital construction plans over the life of the consent decree, 52 million dollars was appropriated and expended toward facilities.

Q. All right. Now looking at those, have you had an opportunity to look at the results in those academic programs that were identified as consent decree programs to be established at the predominately black institutions? When I say to look at them, I mean in terms of their eventual effectiveness in attracting other race students?

A. Yes, there was some of the programs that were in areas that LSU had programs. An example would be social work at Grambling State, criminal justice at Grambling [102] State.

Q. Were both of those consent decree programs?

A. Both of those were consent decree programs. The annual expenditures in social work at Grambling were approximately seven hundred thousand dollars a year. They had 48 students enrolled.

Q. How did that compare with the number of students and the expenditures at Louisiana State University for social work?

A. The amount of expenditures were fairly close, they were generally within fifty thousand or a hundred thousand dollars of one another, but LSU was carrying 250 students in the social work program as opposed to the 48. So the expenditures per student were four or five times as high.

In the area of criminal justice, it's almost an exact parallel, the expenditures were in the range of three hundred thousand dollars a year for most of the consent decree, although at the end of the consent decree the expenditures were up at Grambling above $400,000 a year. There were again, I think it was 49 students enrolled in that program at Grambling, and again, approximately 250 enrolled at Louisiana State University, and the cost per student were roughly four to five times as high at Grambling.

[103] Another degree program I watched with some interest was one at Southern University, environmental chemistry. Over the life of the degree [sic] some $1,350,000 was expended on that particular program and it had five students enrolled at the end of that program.

Q. Five students in total?

A. Five students in total.

Q. Do you know what the white presence at the predominantly black institutions was prior to the implementation of the consent, the 1981 consent decree?

A. Yes.

Q. What's that figure?

A. There are about 100,000 white students, that's a ballpark figure, but it helps you to understand the percentages to know how large the base is. Prior to the beginning of the consent decree programs, about three tenths percent of the white enrollment in Louisiana was at the predominantly black institutions.

Q. And what was the figure after the academic, the new academic programs had been fully implemented?

A. At the end of the consent decree, the figure had risen to 1.1 percent of the white students that were enrolled at the predominantly black institutions.

Q. What was the overall percentage of white students in the predominantly black institutions after the consent [104] decree?

A. Okay. When you say after the consent decree, at the very end of the consent decree, the enrollments of the predominantly black institutions were about 5.8 percent white. That's taking all four of those institutions collectively.

Q. That include undergraduate and graduate?

A. That includes undergraduate and graduate, right.

Q. Do you have any other observations with respect to the effectiveness of the establishment of the academic programs?

A. Yes, one comment would be the enrollment of black students in the state, prior to the consent decree, 57 percent of the black students were enrolled in predominately white institutions. At the end of the consent decree, that had fallen to 48 percent of the black students were enrolled in predominately white institutions.

If one looks at the overall statistics of the consent decree programs, looking at fall of 1988 figures, there were 211 white students involved in the consent decree programs; total enrollment in those programs of about 1650 total students enrolled. The annual expenditures were 14.8 million dollars for the programs, and if one then looks at it from the point of view of [105] that this money was expended in order to increase the other race presence, you can look at it one of two ways, it's $70,000 per year per white student or if you look at the cumulative amount of money, it was $350,000 a year per white student that was enrolled in the consent decree.

Q. Do you have any other comments on the Louisiana consent decree?

A. No, I don't.

MR. LEVIN: May I have a moment, Your Honor?

THE COURT: Yes, sir. Is that a five year period, Doctor?

A. Your Honor, the program was approved in the early fall of 1981. It really didn't get started enrolling until 1982, and the investments in 1982 were reasonably small. The consent decree ended December 31, 1988 and so that's the time frame.

Q. Just a point of clarification, Doctor Wharton, with respect to the $350,000 per white student that you testified to, that's $350,000 per what, per year?

A. No, I said cumulative, and what you do is you take the 75 million dollars, invest it over that time period, and then you take the 211 white students and you divide 75 million by 211 and that gives you $355,000 per white student. In other words, if that was the objective, this [106] is how much has been spent to get to the point where you have added 211 white students to the consent decree.

MR. LEVIN: Thank you. That's all, Your Honor.

* * * *

DIRECT TESTIMONY OF KERRY DAVIDSON
[Without Attachments]

Kerry Davidson has headed the Board of Regents' Academic Affairs Division since its creation in 1975. He is presently the Deputy Commissioner for Academic Affairs and Research. Prior to that time he served as Chairman of the History Department, Chairman of the Department of Social Sciences at Southern University-New Orleans, and Chairman of the History Department at Fisk University.

As the Regents' Associate Commissioner for Academic Affairs and Research, Davidson has the primary staff responsibility for reviewing proposed academic programs and evaluating existing programs at Louisiana's public institutions of higher learning. [Davidson was previously stipulated to be an expert in the development of academic programs (1981 deposition, p. 47)].

In determining whether to approve a new academic program at an institution, Davidson and the Regents consider the following: 1) existing and required resources; 2) present and available faculty; 3) projections for possible students, quality as well as quantity; 4) interest by outside agencies; 5) library resources; 6) institutional commitment to the program on a long-term basis; and 7) (in the case of a proposal made by a PWI, the Consent Decree required consideration of: possible impact on the enhancement of PBIs.)

The evaluation of quality of an existing program depends in large measure on the nature of the program. At the doctoral level and for many specialized programs at the master's level, outside consultants are normally brought in.

Under the Consent Decree a total of 62 new academic programs were approved by the Board of Regents for implementation at the predominately black institutions. By June 7, 1988, 19 new programs had been put into place at Southern University-Baton Rouge, 14 new programs at Southern University-New Orleans. 18 new [2] programs at Grambling State University, and 11 at Southern University-Shreveport. In addition, five cooperative programs had been approved for implementation by Southern University-Shreveport and Bossier Parish Community College. Two programs prescribed by the Consent Decree have not been implemented by the Board of Regents.

Grambling State University withdrew its request for the M.S. in Science Education and Southern University-Baton Rouge requested a Ph.D. in Accounting instead of the prescribed Doctor of Professional Accountancy. The latter request was approved by the Justice Department in 1987. The program proposal has not yet been submitted by SU-BR for approval by the Regents, and Southern has indicated that it may not be ready for submission for some time. The list of the new academic programs, by institution, appears in Attachment A.

Davidson's presentation to Governor Roemer's Task Force on Public Higher Education (September 30, 1988) indicates that " . . . , sadly, a number of programs provided in the Consent Decree were programmed at the outset for weakness or failure . . . ." (See Attachment A).

From September 18, 1981 forward, the Board of Regents, prior to approval of any new academic program at a predominantly white institution, assessed the impact of implementing the program on the achievement of other-race enrollment goals at predominantly black institutions. The Board developed a questionnaire to be completed by each predominantly white institution proposing an academic program and a set of questions to be answered by predominantly black institutions concerning each new academic program which a predominantly white institution proposed. The institutions' responses to these questionnaires were included in impact assessments prepared by the Board for each program proposed by a predominantly white institution and acted upon by the Board of Regents. From 1982 through the present, the Board has considered 130 proposals for new academic [3] programs from white institutions. Twelve were disapproved, and actions on 6 were deferred on the grounds of quality or need. Of the remainder, the Board disapproved 21 because they posed the risk of impairing other-race enrollment ar predominantly black institutions. Of the 86 programs approved at predominantly white institutions since 1982, 6 received approval only after the attachment of stipulations designed to encourage other-race enrollment at predominantly black institutions. Most recently, for example, the Board approved the M.S. in Systems Technology at Louisiana State University-Shreveport with the stipulation that all coursework would be offered at Barksdale Air Force Base and no class would begin before 4:30 p.m. The purpose of these restrictions was to prevent the new program from negatively

impacting on the Master of Business Administration (Computer Information Systems option) at Grambling State University.

The Board of Regents periodically reviews academic programs at institutions throughout the state to assess educational quality and need. Those programs not meeting the Regents' standard are subject to elimination. In recent years, the state's fiscal crisis has placed added pressure on the Board of Regents to eliminate duplicative programs or programs of inadequate quality and insufficient need. From 1982 through the present the Regents have reviewed 583 programs; 106 of these were located at predominantly black institutions. Of the 583 programs reviewed, 514 were maintained and strengthened, and 69 were terminated; 14 of the programs terminated were located at predominantly black institutions.

Not included in these totals are the "low completer" program reviews which the Board undertook during 1987 due to budgetary constraints. The Board reviewed 459 programs which had produced fewer than 5 graduates during the previous 5 [4] years. 293 of these were maintained and strengthened, while 166 programs were terminated. Among the "low completer" programs terminated, 41 were located at predominantly black institutions. In 36 of the 41 instances of termination, the predominantly black institutions concurred with action by the Regents.

In its reviews of existing programs at predominantly black institutions, the Board of Regents has considered whether elimination might disproportionately affect the institution. This consideration has persuaded the Board of Regents to refrain from terminating several programs at predominantly black institutions that might have been terminated if considerations of duplication, need, and quality alone had been determinative. For example, due to serious questions regarding both quality and need, separate teams of consultants recommended the termination of the architecture and engineering programs at Southern University-Baton Rouge. The Board of Regents, recognizing the importance of these programs to the enhancement of Southern University, voted to maintain and strengthen each program.

DIRECT TESTIMONY OF DOUGLAS REWERTS
[Without Attachments]

Douglas Rewerts, Assistant Commissioner for Facility Planning has been in charge of facilities and capital outlay matters for the Board of Regents since late 1979. Prior to this he was employed by the H. J. Wilson Co. as Corporate Architect in charge of store planning and construction. Prior to that he was in private practice as an architect. He has a Bachelor of Architecture degree and is licensed to practice architecture in the state of Louisiana.

[The Board of Regents submits that the following testimony is irrelevant to the issue of remedy and should not be admitted. If, however, any party is permitted to introduce testimony concerning the capital improvements at the predominantly black institutions during the period of the Consent Decree, or the alleged inequality of the physical plants at predominantly black and predominantly white institutions, the Board of Regents reserves the right to rebut such testimony. At a minimum the Regents would show as follows:

Under the Consent Decree the State of Louisiana undertook to improve existing facilities and construct new facilities at the predominantly black institutions such that their physical plants would be comparable to those of similar predominantly white institutions. In August 1982, in accordance with the Consent Decree, a panel of experts completed a study of the nature and extent of facilities deficiencies at the predominantly black institutions and identified capital outlay projects necessary to upgrade the physical plants of predominantly black institutions. The panel of experts recommended nearly $55 million in improvements for the predominantly black institutions. In October 1982, the Board of Regents adopted a Consent Decree Five-Year Capital Outlay Plan (1983-87), taking into account the recommendations of the Facilities Study. The Regents' plan recommended $95.5 million in improvements for the PBI's. The Regents' plan was updated in October of subsequent years through 1987. Adjustments to the plan for inflation and programmatic changes brought the total plan to $124,044,691 in October 1987. A total of $35,813,375 has been appropriated and funded by the state through December 1988. $15,905,000 is included in the bond section of the current capital outlay act (Act 769 of 1988) for Consent Decree

projects. This leaves $72,326,316 unappropriated and unfunded of the $124 million plan. A summary of Consent Decree Capital Outlay Funding is included as Attachment A.

As in the normal routine the Regents made capital outlay recommendation in October 1988. However, at that time the fate of public higher education was in a state of flux. At that time ideas submitted by the parties engaged in the negotiations indicated that the role, scope, and missions of many of our institutions could change. Role, scope and mission changes could have dramatic impacts on the physical plants of the institutions. [2] Given this fact and the extremely limited financial resources of the state, the Board decided to limit capital recommendations for 1989-90 to true emergencies, hazardous materials abatement projects, projects that will preserve the state's current investment in physical plant, and projects that will provide considerable savings in operating costs. None of the recommended projects should be impacted by changes in role, scope, and mission of the institutions. The recommendations are summarized as follows:

Emergency projects	$ 898,500
Hazardous Materials Abatement Projects	2,130,000
Roof Repairs/Replacements, Utility Improvements & Energy Conservation Projects	15,323,218
	$ 18,351,718

Action on all other requests for capital funding was deferred until a later date. A summary of the Board of Regents' 1989-90 Capital Outlay Recommendations is included as Attachment B. The Board has not adopted a five-year plan for 1989-93 for the same reasons that the 1989-90 recommendations were limited. The Board will reconsider its 1989-90 Capital Outlay Recommendations in late February 1989, so that any necessary revisions to the recommendations can be forwarded to the Division of Administration and Legislature prior to the next regular session of the Legislature scheduled to begin is mid-April.

A summary of state funds provided for capital outlay projects at all state institutions of higher learning from 1982 through 1987 together with the percentage of such funds received by the PBI's in included as attachment C.

A summary of the 1988 Capital Outlay Bill (Act 769 of 1988) is included as Attachment D.

On numerous occasions since the Consent Decree Capital Outlay Plan was adopted by the Regents, Grambling State University has contended that a $14-18 million Health, Physical Education, & Recreation building was a part of the Consent Decree Capital Outlay Plan. However, Grambling did not make this contention until after the second year the Regents had adopted the plan. That year the published recommendations of the Regents contained a typographical error in one of three places that the project appeared in the document. The H & PER project was inadvertently listed with an asterisk beside it in the regular five-year plan (The asterisk denoted CD projects). It should be noted that this project was never included in the Regents' Five Year Consent Decree Plans, nor was it recommended by the Facilities Study Panel. The project has been included in the [3] Regents regular Five-Year Capital Recommendations through the years.

On occasions since the Regents revised their capital outlay equipment guidelines in October 1987, Grambling has indicated that these guidelines were burdensome and confusing. The Regents revised the guidelines in an effort to clarify for the institutions what types of equipment would be allowed in capital outlay and to bring our guidelines in conformance with those guidelines already imposed by the Division of Administraion. The Regents' guidelines were basically the same as the DOA's, but included more specific information.

DIRECT TESTIMONY OF LARRY TREMBLAY
[Without Attachments]

Larry Tremblay is employed by the Board of Regents as Coordinator of Research and Data Analysis. He has held that position since 1976. In connection with his duties at the Board of Regents, Tremblay collects, stores, and works with data provided by various information services, including the Statewide Student Profile System (SSPS),[1] the Higher Education General Information Survey (HEGIS) (replaced by the Integrated Postsecondary Education System (IPEDS) in 1986)[2], and the American College Testing Program (ACT).

Some of that data, relating to black and white students enrolled at Louisiana's institutions of public higher education are reported below.

From 1976 to 1980 black enrollment at the PWI's increased from 15,069 to 16,536 (HEGIS). From 1980 to 1981 there was a further increase to 18,887 (HEGIS). From the time that the Consent Decree was entered in 1981 to the present, there have been steady declines in black enrollment at the PWI's, despite an upward trend in black enrollment as a whole.

In the fall of 1981, 32,899 (SSPS)/34,480 (HEGIS) black American students attended public institutions of higher education. Of these, 18,812 (SSPS)/18,887 (HEGIS), or 57.2% (SSPS)54.8% (HEGIS), were enrolled at predominantly white institutions.

In the fall of 1981, 97,961 (SSPS)/105,035 (HEGIS) white American students attended public institutions of higher education. Of these, 284 [2] (SSPS)/270 (HEGIS), or 0.3% (SSPS)/0.3% (HEGIS), were enrolled at predominantly black institutions.

Fall, 1981 enrollment figures, by race, for the individual institutions are reflected in Attachment A.

By fall, 1988 public institutions of higher education statewide reported enrollment of 34,521 (SSPS/34,753 (IPEDS) black students. Of these, 16,380 (SSPS)/16,624 (IPEDS), or 47.4 (SSPS)/47.8 (IPEDS) % were enrolled at predominantly white institutions.

[1]SSPS data do not include the LSU Medical Center.

[2]HEGIS/IPEDS data do not identify Louisiana residents.

By fall, 1988 public institutions of higher education statewide reported enrollment of 99,749 (SSPS)/102,579 (IPEDS) white students. Of these, 1,181 (SSPS)/878 (IPEDS), or 1.2 (SSPS/0.9 (IPEDS) % were enrolled at predominantly black institutions.

Fall, 1988 enrollment figures, by race, for the individual institutions are reflected in Attachment A.

Information provided by Southern and Grambling shows the following enrollment, by race, in the new Consent Decree academic programs in 1988:

Southern University-Baton Rouge

Program(s)	Black	White	Other	Total
B.S. Rehab Counseling	22	0	1	23
Mast Public Admin	44	0	17	61
MA/MS Rehab Counseling	33	1	2	36
B.S.Environ Chemistry	5	0	0	5
B.S.Nursing	53	4	5	62
M.S. Computer Science	38	5	28	71
M.A./Ed.S./Ed.D./Ph.D. Special Education*	146	11	5	162
[3] Mast Prof Accountancy	10	0	5	15
Total	**351**	**21**	**63**	**435**
Percent of Total	80.69%	4.83%	14.48%	

Southern University-New Orleans

Program(s)	Black	White	Other	Total
B.S. Transportation	4	2	2	8
B.S. Print Journalism	13	0	1	14
AS Computer Science	42	0	0	42
BS Technology	7	2	0	9
BS Substance Abuse	30	24	2	56
BS Criminal Justice	56	1	0	57
Mast Social Work	63	34	5	102
BS Urban Studies	6	0	0	6
Total	**221**	**63**	**10**	**294**
Percent of Total	75.17%	21.43%	3.4%	

*M.A./Ed.S Joint Degree Program with LSU-BR

Grambling State University

Program(s)	Black	White	Other	Total
MAT Social Sciences	5	0	1	6
Mast Bus Admin	18	0	13	31
Mast/EdS/EdD Develop Educ	60	14	4	78
BS Nursing	300	57	3	360
MAT Natural Sciences	16	0	1	17
Mast Liberal Studies	21	0	2	23
Mast Public Admin	16	0	4	20
Mast Social Work	46	19	1	66
Ms Crim Justice	32	12	4	48
Total	**514**	**102**	**33**	**649**
Percent of Total	79.20%	15.72%	5.08%	

[4] Southern University-Shreveport*

Program(s)	Black	White	Other	Total
AS Early Childhd Educ	0	0	0	0
AA Day Care Admin	8	0	0	8
AS Small Bus Admin	0	0	0	0
AS Surgical Tech	0	0	0	0
Cert Nurse's Ass't	105	8	0	113
AA Legal Ass't	0	0	0	0
AA Mental Health/Retard	0	0	0	0
AS Computer Sci	59	9	0	68
AAS Banking & Fin	0	0	0	0
AAS Electronics Tech	39	3	0	42
AAS Radiologic Tech	0	0	0	0
AS Hotel/Motel Mgt	0	0	0	0
AA Tourism/Travel Mgt	0	0	0	0
AAS Medical Rec Tech	24	5	1	30
AAS Respiratory Ther	0	0	0	0
Total	**235**	**25**	**1**	**261**
Percent of Total	90.04%	9.58%	0.38%	

Source: UGGRCIPD

*The data submitted by Southern University-Shreveport appear incomplete, and therefore, suspect.

Louisiana's open admissions policy results in the enrollment of thousands of underprepared students at Louisiana's public colleges and universities. In 1987 the composite score on the ACT Assessment for Louisiana high school students was higher than for freshmen entering public higher education, apparently because many students scoring higher than average on the ACT leave the state.

A test taker receives a score of one (1) for signing the answer sheet. ACT representatives have commented that random completion of the answer sheet without reference to the questions will yield a score of 6-7. In [5] fall, 1987, seven students enrolled in Louisiana public higher education with a score of 2; 2,106 scored 8 or less on the ACT Assessment. An ACT composite score of 8 was in the 8th percentile in Louisiana, but only the 3rd percentile nationally.

In 1987-88, the mean ACT score of Grambling's freshman class was 11.0, with 81% of the class scoring 15 or below. At proximate Louisiana Tech, the mean score was 18.3, with 65% of the class scoring 16 or higher. In the freshman class at Southern University-Baton Rouge, the mean ACT score was 11.3 with 79% scoring 15 or below. At proximate Louisiana State University-Baton Rouge, the mean score was 19.6 with 80% of the class scoring 15 or above. At Southern University-New Orleans, the mean score was 9.7 and over 90% of the class scored at 15 or below. At proximate University of New Orleans, the mean score was 16.4 and over 50% of the class scored 16 or higher. Table 1.1 of the ACT Class Profile from each institution for 1987-88 are included in Attachment B. In addition, more detailed ACT information concerning reported ACT scores and high school G.P.A. for entering 1987 freshman at Louisiana's 4-year colleges appears in Attachment B.

There has been considerable debate about the use of ACT scores as a measure of a student's ability or likelihood of success in higher education. Most students entering institutions of public higher education in Louisiana are required to take the ACT Assessment. Regardless of the pros and cons expressed nationwide of using the ACT as predictor, there has been a strong correlation between performance on the ACT and attrition in the population studied in the Consent Decree attrition study (the [6] firsttime freshman class of 1982). In the study

population, the attrition* rates by ACT interval through spring, 1988, were as follows:

ACT 1-5	81%
ACT 6-10	75%
ACT 11-15	63%
ACT 16-20	50%
ACT 21-25	38%
ACT 26-36	28%

Attrition rates and graduation rates for the fall, 1982 firsttime freshman class through the spring of 1988 appear in Attachment C.

Although none of Louisiana's public institutions place students in developmental education based solely on performance on the ACT, it is commonly used as a "flagging" mechanism to identify students for further testing and evaluation. The participation, by race, of 1988 fall firsttime freshmen in developmental education at the state's proximate institutions of public higher education is as follows:

*Attrition was defined as not being enrolled in Louisiana public higher education for three or more consecutive terms.

	BLACK		WHITE		OTHER		TOTAL	
	#	%	#	%	#	%	#	%
Grambling	1,042	75.7	4	100.0	12	100.0	1,058	76.0
Tech	140	49.3	425	28.6	6	28.6	571	31.5
LSU	144	43.8	650	20.7	22	10.5	816	22.2
SUBR	1,503	77.3	2	13.3	17	56.7	1,522	76.5
SUNO	291	89.8	3	7.0	2	9.5	296	76.3
UNO	508	88.5	915	54.4	110	50.2	1,533	62.0

ADMINISTRATIVE PROCEEDINGS IN THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; LAW ENFORCEMENT ASSISTANCE ADMINISTRATION; GENERAL SERVICES ADMINISTRATION; NATIONAL SCIENCE FOUNDATION; THE VETERANS ADMINISTRATION; DEPARTMENT OF AGRICULTURE; DEPARTMENT OF INTERIOR; DEPARTMENT OF COMMERCE; DEPARTMENT OF STATE; DEPARTMENT OF LABOR;

ACTION AND ADMINISTRATIVE PROCEEDING IN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

In the Matter of the STATE OF NORTH CAROLINA and THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, et al.,

Respondents.

HEW Docket No. 79-VI-1
HUD Docket No. 79-4

LL Hearing Room 1
Gelman Building
2120 L Street, N.W.
Washington, D. C.

Wednesday, 13 August 1980
9:30 a.m.

BEFORE:

HON. JOHN J. MATHIAS
Administrative Law Judge

APPEARANCES:

On Behalf of the Government:

RICHARD L. FOSTER, Esq.
JEFFREY F. CHAMPAGNE, Esq.
ARTHUR LEED, Esq.

* * *

[HEARING TESTIMONY OF HAROLD HOWE, II]

[2787] JUDGE MATHIAS: Please come to order.

BY MR. LEVIN:

Q. Mr. Howe, in an affidavit filed on June 5, 1979, in connection with – I should correct myself, to say an affidavit dated June 5, 1979, and filed in the case of the State of North Carolina versus the Department of Health, [2788] Education, and Welfare, Peter Libassi stated that he relied on a blue-ribbon panel of experts on higher education to assist the Department in drafting the criteria and the panel provided comments and criticisms which influenced the final product.

And attached to that affidavit was a list of the people in attendance at that panel, and your name heads the list as Harold Howe, vice-president of the Ford Foundation.

Do you have any recollection of that panel meeting?

A. As I testified in the course of my deposition, I did not at that time have any recollection at all of that. And since this kind of record was clear, I agreed to see what I could do to encourage my memory and to look into any facts I had about it.

I subsequently wrote either you or Richard Foster or both to the effect that I had found on my calendar a meeting in HEW and the date of record is in that letter. It was in January of '77, if I recall correctly, but you do have the record of it somewhere.

So I said that I apparently had been at a meeting of that group and apparently that was it, but I could not recall any details of the meeting. It did not make a great impression on me, quite clearly.

And I looked through the files in my office and can find no formal invitation to be a member of that panel. I am [2789] frequently in the role of meeting with groups connected to the government about some subject or other. This happens all the time.

And so it doesn't surprise me that I forgot the affair, but I regret that I did, and I can't give you much more report than that about it.

Q. And you presently have no independent recollection what transpired at that meeting?

A. As I think I said to you in my letter, I vaguely remember that Mary Berry was there, and — but I really don't have any solid recollection that would be useful.

Q. Do you have any recollection of Secretary Califano during the course of that meeting attacking the traditional black colleges?

A. No, sir, I don't.

Q. You recently had a conversation, did you not, with Secretary Califano, in which he thanked you for participating in that panel?

A. Well, we weren't discussing that at all, and he made that a kind of a side remark. We were discussing the way by which the President of the United States was elected, if there was a way to improve upon it.

Q. Did you come to any conclusions?

(Laughter.)

A. I don't think that is particularly relevant to this.

Q. No, sir, but it is very interesting.

A. And then Joe - and I think maybe Joe was being supercilious, because he had heard I had forgotten the meeting.

In any event, he did say, "You did a great job for me, Doc, on that blue ribbon panel," as he got in the elevator. And that's all I can tell you; I made no response.

Q. During your tenure as United States Commissioner for Education, as I understand it, you had no significant involvement at that time in higher education desegregation issues; is that correct?

A. Yes, I think that's correct.

* * * *

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY

TO: Peter Libassi DATE: April 11, 1977

FROM: Richard Cotton

SUBJECT: Prestigious Consultants in *Adams*

I attach a list of proposed consultants to be asked to join in one or two meetings to analyze the issues and the proposed criteria in *Adams*.

The names placed parallel to each other are either/or alternatives with the first name of the preferred person.

Incidentally, if we meet with these people once or twice, can we avoid the Federal Advisory Committee Act?

Attachment

[2] Harold Howe
Vice President
Education and Research Division
The Ford Foundation
320 43rd Street
New York, New York 10017
212/573-4677

*Frances Keppel
Director
Program on Education
Aspen Institute for Humanistic Studies
6 Appian Way
Room 433
Gutman Library
Cambridge, Massachusetts 02138
617/495-4677

Elias Blake
President
Institute for Services to Education
2001 S Street, N. W.
Washington, D.C. 20009
797-3500

Norman C. Francis
President
Xavier University of Louisiana
7325 Palmetto Street
New Orleans, Louisiana 70125
504/486-7411 x. 221

*Walter Leonard
Special Assistant to the President
Harvard University
Massachusetts Hall
Cambridge, Massachusetts 02138
617/495-1531

Marian Edelman
Children's Research Project
Albany, New York

Clark Kerr
Carnegie Council on Policy Studies on Higher Education
2150 Shattuck Avenue
Berkeley, California 94704
415/849-4474

Andrew Billingsley
President
Morgan State University
Colvspring Lane-Hillin Road
Baltimore, Maryland 21239
301/893-3200

Ralph Hewitt
Executive Director
National Association of State Universities and Land-Grant Colleges
No. 1 Dupont Circle, N.W.
Washington, D.C. 20036
293-7120

*Alan Ostar
American Association of State Colleges and Universities
No. 1 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036
293-7070

*Alternate

TRANSCRIPT OF PROCEEDINGS

ADMINISTRATIVE PROCEEDING IN THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; LAW ENFORCEMENT ASSISTANCE ADMINISTRATION; GENERAL SERVICES ADMINISTRATION; NATIONAL SCIENCE FOUNDATION; THE VETERAN'S ADMINISTRATION; DEPARTMENT OF AGRICULTURE; DEPARTMENT OF INTERIOR; DEPARTMENT OF COMMERCE; DEPARTMENT OF STATE; DEPARTMENT OF LABOR; ACTION AND ADMINISTRATIVE PROCEEDING IN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

In the Matter of the STATE OF NORTH CAROLINA and THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, et al.,

Respondents.

HEW Docket No. 79-VI-1

HUD Docket No. 79-4

DEPOSITION OF SHELDON ELLIOT STEINBACH

5th Floor Conference Room
330 C Street, S.W.
Washington, D.C.
June 5, 1980
10:00 a.m.

[2] APPEARANCES:

On Behalf of the Respondents:
J. RICHARD COHEN, Esquire
Charles Morgan, Jr. & Associates, Chartered
1899 L Street, N.W.
Washington, D.C. 20036

On Behalf of the Government:
JEFFREY CHAMPAGNE, Esquire
330 C Street, S.W.
Washington, D.C.

* * *

[3] DIRECT EXAMINATION
BY MR. CHAMPAGNE

* * *

[8] Q. As you mentioned before, there was a body now known as the Blue Ribbon Panel. Was it, when you were active in it, known as the Blue Ribbon Panel at that time?

A. No.

Q. When were you asked to participate in this group?

A. I was asked to participate by Roger Hynes to [9] whom the initial, the former president of the American Council on Education, now president of the Hewlitt Foundation in Palo Alto, California. He would have I think under any circumstances turned it over to me, but he was departing his office at the ACE at the time and he turned over the letter invitation to me with a buck notice as to whether I wanted to attend or not. And I said surely, I would be happy to attend.

Q. Do you recall from whom the letter came?

A. I have not – my recol – I do not recall directly. I think it may have been signed by the Secretary.

Q. Do you recall from either the letter or from your understanding of the purpose of the group as it convened or what the purpose was?

A. My recollection was that the purpose of the meeting, as I recall the invitation, obviously, I have looked through my files and I do not have a copy, was to bring together a group of people to discuss in a general way the issues involving desegregation of higher education.

Q. Was it known to you through the letter or in any other way that it related to the Adams case?

A. No, I don't – no. To the best of my [10] there was no mention of that in the invitation letter nor was that ever brought about or mentioned during the course of a meeting.

Q. Aside from what was mentioned, did you know that to be the case?

A. No, I did not.

Q. So was it your impression that there was an attempt to bring together a homogeneous group or diverse or how would you characterize it?

A. Of the people that I knew there, my feeling was that there was an attempt to bring about a reasonably diverse group of individuals.

Q. Do you think that attempt was successful?

A. No, not particularly. There seemed to be, Mr. Champagne, a uniformity of views expressed by people with expertise and a self-interest in predominantly black institutions of higher education. The white members of that panel from the best of my recollection were remarkably quiet during most of the discussion that afternoon.

Q. Let me paraphrase what you said and you can tell me whether it is accurate. Putting those two things together, there was something of a unanimity but only among those who spoke?

[11] A. There were some, as I recall, some diversity but there was – yes, a general unanimity of views from the black members of that committee.

Q. And can you remember any of the ideas or factors about which they were unanimous?

A. There seemed to be general agreement and a majority of the time spent once Mr. Califano walked into the room, after he made his presence, which was a half an hour or so after the meeting began, make it a little longer, was with the benefits to black community in general in preserving the traditional black institutions of higher – public black institutions of higher education.

Q. Are you saying that that was the gist of the comments to the Secretary or –

A. Yes.

Q. – from the Secretary?

A. No. To the Secretary.

Q. To the Secretary. And what was the view – did you feel you were representing the American Council on Education at that meeting or essentially –

A. No, I did not at any time feel that at all. I felt that this was an individual invitation and they were – I was there solely as an individual.

[12] Q. And what view did you express?

A. To the best of my recollection, Mr. Champagne, I did not say a thing the entire afternoon.

Q. Was that because you didn't have a view or perhaps because you felt inhibited? Why was that?

A. I did not state anything for a variety of reasons. Primarily, I do not have or did not have any expertise in the issues that these gentlemen were addressing, number one. My interest in the area as a matter of record in the *amicus* brief we filed in the Fourth Circuit, Mandel versus HEW, were solely on the procedural issues involved which were never addressed that afternoon.

Q. What are some of the procedurals you wish had been addressed?

A. The issue of the formulation of guidelines for desegregation in higher education which had not then been promulgated was never raised as an issue. The other issue for which our organization was very concerned was simply the attempts by HEW in the Maryland situation to cut off federal funding before any final judicial determination had been made as to the legitimacy of the claim that had been made.

Even in the Maryland case, for example, we [13] clearly stated we took no position with regards to the merits of the claim of HEW but we were solely in on the procedural issues.

Q. Without trying to bind you or your organization, do you currently know whether your organization or yourself have any position on the merits of the current dispute between the federal government and the state of North Carolina?

A. None. I do not. I don't – and our organization has had no reason or occasion to undertake a position.

Q. Could you describe, you have described part of the session of the panel, the one theme that was brought out to the Secretary. Could you describe the rest of the day and tell me –

A. Well, to be –

Q. – how long the session was, whether there were any –

A. My recollection it started at 2 o'clock, around 2 o'clock; ended at about 4:30, 4:45, possibly a little earlier, 4:15.

The early part of the session I cannot quite recall. I do recall rather vividly the discussion for about a half hour after the Secretary arrived [14] simply because 1) it was the first time I had occasion to meet the Secretary, and 2) I was somewhat surprised by his opening statement in which he deplored the poor board scores, college board scores, college submission scores then that were at the predominantly black institutions and that started a substantial conversation as to the validity of board scores that went on for well over half an hour, I would imagine.

Q. You are referring now to the SAT scores of entering freshmen?

A. Correct.

Q. And what else was discussed?

A. Following that there was, as I said, a substantial discussion of the merits and value to the black community of maintaining these institutions. There then followed a reasonably lengthy discussion of the inequality of allocation of resources to the black institutions. That took up a major portion of the time. And there was some discussion, as I recally [sic], of the issue of how does one get sufficiently qualified, academically qualified, black students ready so that they can 1) meet higher academic qualifications at the Chapel Hill campus at the University of North Carolina and the – and then a reasonable discussion about the sociological factors involved in how high [15] school students, graduated high school students, goes [sic] out picking their colleges; a lively discussion of how one, for example, might – is difficult to create the incentives for some students to go to places where the – for other reasons they may feel more comfortable one place or another, simply relating to the problem of getting a substantial number of black high school graduate students to apply to more traditionally white institutions when their colleagues and neighbors, friends, may have in the past gone to the more traditionally black institutions and just a matter of comfort and what have you may have gone there.

That seemed to take up a good portion of the time. With a black sociologist present, whose name I can't recall, we spoke quite a bit about that and some other subjects which I can no longer recall.

Q. You mentioned the University of North Caroline [sic] a moment ago. Was North Carolina mentioned specifically during that discussion?

A. Yes.

Q. Were other states mentioned?

A. Not to my knowledge. Even though President Shannon, former President Shannon of the University of Virginia was sitting in that room, I don't believe at [16] any time did the conversation deviate from a concentration of North Caroline [sic]. I think part of that may have been brought about by the Secretary's initial discussion stating figures, the SAT freshman figures for North Caroline [sic] institution as an example.

Q. I see.

A. That they in fact focused things on North Carolina even though one of the states have had problems too.

Q. A previous deponent recalled that hypothetical or options addressing different notions of what became the criteria were presented to some people that the government consulted with and possibly to this panel. Do you recall whether they were presented to this panel?

A. Mr Champagne, I have no recollection. There was certainly no written material passed out. To the best of my knowledge there was no agenda placed before us and from the tone of the invitational letter, as I recall it, and for what actually occurred, it was a far-reaching discussion of a variety of things which happened to come to people's minds.

* * * *

(13)

Nos. 90-6588 and 90-1205

Supreme Court, U.S.
FILED
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IN THE

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OCTOBER TERM, 1991

JAKE AYERS, JR., *et al.*,
Petitioners,

v.

RAY MABUS, GOVERNOR,
STATE OF MISSISSIPPI, *et al.*,
Respondents.

UNITED STATES OF AMERICA,
Petitioner,

v.

RAY MABUS, GOVERNOR,
STATE OF MISSISSIPPI, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA IN SUPPORT OF RESPONDENTS, RAY MABUS, GOVERNOR, STATE OF MISSISSIPPI, *ET AL.*

C. GLENN POWELL
STANLEY J. MURPHY *
THE UNIVERSITY OF ALABAMA SYSTEM
Office of Counsel
401 Queen City Ave.
Tuscaloosa, AL 35401
(205) 348-8351
Attorneys for Amicus Curiae

* Counsel of Record

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---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA

The Board of Trustees of The University of Alabama (hereinafter "University of Alabama" or the "University") respectfully moves for leave to file the attached brief amicus curiae in support of the respondents. The Solicitor General of the United States and counsel for the respondents have consented to the filing of the attached

brief. Counsel for private petitioners have refused to consent to the filing of the brief.

The University of Alabama is a party to litigation in Alabama involving several claims and issues similar to those raised in the case at bar. Trial has been completed and a decision is pending in *Knight v. State of Alabama*, No. CV-83-M-1676-S (N.D. Ala. filed July 7, 1983). In earlier appeals of that and related cases, the United States Court of Appeals for the Eleventh Circuit made certain rulings that were consistent with the decision of the Fifth Circuit in the case at bar. *United States v. Alabama*, 791 F.2d 1450 (11th Cir. 1986), *reh'g denied*, 796 F.2d 1476 (11th Cir.), *cert. denied sub nom., Board of Trustees v. Alabama Bd. of Educ.*, 479 U.S. 1085 (1987); *United States v. Alabama*, 828 F.2d 1532 (11th Cir. 1987), *cert. denied sub nom., Board of Trustees v. Auburn University*, 487 U.S. 1210 (1988).

In its petition for a writ of certiorari in the Mississippi case the United States described the Alabama litigation as "a similar higher education desegregation case" and cited its pendency as a reason for this Court to grant the petition. Petition of the United States for a Writ of Certiorari at 7 n.3, *United States v. Mabus*, No. 90-1205.

In the long course of the Alabama litigation the United States has changed its position on several issues central to higher education desegregation. The University of Alabama has an important historical perspective on the practical effect of attempts to apply these changing standards and others urged upon the Court by the private petitioners and certain of their supporting amici, to the realities of higher education.

More importantly, the University of Alabama has had experience with the issue of racial segregation and desegregation and certain issues of fact raised by the United States, the private petitioners and their supporting amici. The record in the Alabama litigation contains information on issues such as the history and contemporary status of traditionally black institutions, representation of blacks on faculties, and the government's flawed curriculum duplication analysis, which may be helpful to the Court in its deliberations.

For the foregoing reasons, the Board of Trustees of The University of Alabama submits that the attached brief provides an important perspective on relevant issues that differs from those of the parties. This Movant respectfully requests that its motion for leave to file a brief as amicus curiae be granted.

Respectfully submitted,

C. GLENN POWELL
STANLEY J. MURPHY *
THE UNIVERSITY OF ALABAMA SYSTEM
Office of Counsel
401 Queen City Ave.
Tuscaloosa, AL 35401
(205) 348-8351
Attorneys for Amicus Curiae

* Counsel of Record

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BRIEF AMICUS CURIAE OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA IN SUPPORT OF RESPONDENTS, RAY MABUS, GOVERNOR, STATE OF MISSISSIPPI, *ET AL.*

INTEREST OF AMICUS CURIAE

The University of Alabama has some experience with the processes of racial desegregation that may be of assistance to the Court. Since the 1963 "stand in the schoolhouse door," the University has enrolled and grad-

uated thousands of black students, has become a national leader in the graduation of black students in engineering, and has for some time granted doctorates to black students at a rate far higher than the great majority of graduate institutions around the country. The three campuses of the University of Alabama System [1] enroll more black students than either of the two public historically black institutions in Alabama.

This Court's decision in the present case may have some effect on litigation to which the University is a party. Trial has been completed and post-trial pleadings and briefs have been submitted in the case of *Knight v. State of Alabama*, No. CV-83-M-1676-S in the United States District Court for the Northern District of Alabama. The United States, in its petition for a writ of certiorari in *United States v. Mabus*, No. 90-1205, describes the Alabama litigation as "a similar higher education desegregation case" and cites the possible impact of the Fifth Circuit decision on the Alabama case as a reason for granting the petition in *Mabus*. Brief of the United States in Support of its Petition for a Writ of Certiorari at 7 n.3, *United States v. Mabus*, No. 90-1205.

SUMMARY OF THE ARGUMENT

The Fifth Circuit correctly recognized the fundamental differences between elementary and secondary schools and institutions of higher education, and it appropriately applied the factual analyses and legal tests that govern higher education desegregation cases. That court's opinion is fully consistent with the holdings of the Eleventh Circuit and with the practical realities of modern American higher education.

The petitioners' basic theory of liability is premised upon an assertion of institutional interests rather than

[1] The University of Alabama (Tuscaloosa), The University of Alabama at Birmingham, and the University of Alabama in Huntsville.

on the protection of individual rights. Although the history, origin and contemporary role of black colleges and universities may generate an ongoing national debate, they have no causal connection to the question of current access to institutions such as the University of Alabama or the University of Mississippi.

Certain factual issues upon which the United States places great emphasis, such as program duplication between traditionally black and traditionally white institutions and relatively low number of blacks on institutional faculties, have no bearing on the real issues of desegregation. Each of the factual issues identified by the government as indicative of "remnants" of de jure segregation is in fact a phenomenon that is thoroughly national in scope, unconnected to the racial history of any given state or its institutions of higher education.

The United States has dramatically changed its position on central issues in the case, the most important of which is its newly articulated conviction that economic enhancement of historically black institutions is undesirable. Because of such changes, there are now substantial differences between the position of the United States, on the one hand, and the private petitioners and their supporting amici, on the other. These differences are the result of the impossibility of reconciling a legitimate inquiry into issues of equal access and equal opportunity with the agenda of institutional aggrandizement that has been a constant and recurring theme in the case at bar, the Alabama litigation and all similar litigation.

ARGUMENT

I. THE REALITIES OF DESEGREGATION IN HIGHER EDUCATION DIFFER FROM THOSE IN ELEMENTARY AND SECONDARY EDUCATION, AND THE LAW PROPERLY RECOGNIZES THOSE DIFFERENCES

The legal tests and factual analyses appropriate to the two educational strata—elementary/secondary education and higher education—have evolved from different origins and along different paths. The distinction was historically based on the fact that in the world of elementary and secondary schools, students could be compelled to attend and faculty assigned to work at specific schools. In higher education, neither compulsory attendance nor institutional assignment was available as a desegregation remedy.

Much of the United States' theory of liability and concept of remedy is based upon the inappropriate application of elementary and secondary school desegregation arguments to higher education cases. The United States and the private petitioners mistakenly assume that the Fifth Circuit's decision in the case at bar somehow dilutes the mandate of desegregation articulated in *Brown v. Board of Education*, 347 U.S. 483 (1954). In fact, as the Fifth Circuit clearly holds, the rights secured by the constitutional requirement of equal protection attach with full and equal force at all levels of education. It is only the mechanisms available to secure these rights that differ between elementary and secondary and higher education. A brief history of the ways in which this Court and others have recognized these differences may be helpful.

A. The Requirement for Desegregation in Higher Education Was the Antecedent for *Brown v. Board of Education*

Brown v. Board of Education was the culmination of the erosion of the doctrine of separate but equal. By

the time this Court fully overruled *Plessy v. Ferguson*, 163 U.S. 537 (1896), and held that racially segregated elementary and secondary schools were unconstitutional, it had repeatedly invalidated racial barriers to access in higher education. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, *reh'g denied*, 305 U.S. 580 (1938), *and reh'g denied*, 305 U.S. 676 (1939); *Sipuel v. University of Oklahoma*, 332 U.S. 631 (1948); *Sweatt v. Painter*, 339 U.S. 629 (1950); and *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637 (1950). Even in 1953 both the Court and the parties in *Brown* were well aware that the only surviving legacy of *Plessy*, which permitted the separation of young school children by race, was an anachronism.

In oral argument in *Brown*, counsel Thurgood Marshall urged this Court to extend the ruling in *McLaurin* to elementary and secondary schools, and "to make it explicit what they think was inevitably implicit in the *McLaurin* case, that the two [segregation and inequality] are together." *Argument: The Oral Argument Before the Supreme Court in Brown v. Board of Education of Topeka, 1952-55* 238 (Friedman ed., 1969) [hereinafter *Argument*]. His description of elementary and secondary school segregation as the last bastion of *Plessy* was a vivid portrait of its ironic and cruel effect on the life of black children:

> Those same kids in Virginia and South Carolina—and I have seen them do it—they play in the streets together, they play on their farms together, they go down the road together, they separate to go to school, they come out of school and play ball together. They have to be separated in school.
>
> There is some magic to it. You can have them voting together, you can have them not restricted because of law in the houses they live in. You can have them going to the same state university and the same

> college, but if they go to elementary and high school, the world will fall apart.

Argument at 239.

Thus, the view that the desegregation of higher education is a product of *Brown*, and that modern higher education desegregation cases are *Brown*'s progeny, is based on mistaken history. By 1954, higher education antecedents of *Brown* had already begun to toll the knell for the *Plessy* funeral. *Brown* was the final eulogy it so richly deserved.

B. The Mechanisms of Desegregation in Elementary and Secondary Schools Are Neither Available nor Appropriate in Colleges and Universities

The contrast between government control over access to and attendance at elementary and secondary schools and the voluntary student choice of college has been recognized by this Court and many other courts when deciding education desegregation issues. Early in the post-*Brown* era, in *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413 (1956), the Court was quick to straighten out the misconception of the Supreme Court of Florida that some of the complexities and "deliberate speed" of *Brown v. Board of Education*, 349 U.S. 294 (1955), might be applied to delay the desegregation of a state-supported law school. The Court held that "decrees involving admission of blacks to graduate study [do not] present the problems of public elementary and secondary schools . . . . Thus, our second decision in the *Brown* case had no application to a case involving a Negro applying for admission to a state law school." *Hawkins*, 350 U.S. at 413-14.

The power to assign students to schools that they are compelled to attend has been the primary instrument of both segregation and desegregation of elementary and secondary schools. It is a power that does not exist in higher education. Indeed, the significance of this difference appears not only in the remedial stage; it is central

to any determination about liability. This distinction provided the basic premise of the decision of a three-judge panel in *Alabama State Teachers Association v. Alabama Public School and College Authority*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd mem.*, 393 U.S. 400 (1969) [hereinafter *ASTA*]. In *ASTA*, the court denied a challenge to the establishment of a branch of Auburn University in proximity to Alabama State University (ASU, a historically black institution). It held that precisely because of the central role of student choice in college enrollment, many of the issues important in the elementary/secondary school context, such as the proximity of schools, did not provide the proper focus in higher education cases. Judge Frank M. Johnson, Jr. explained this difference as follows:

> Plaintiffs fail to take account of some significant differences between the elementary and secondary public schools and institutions of higher education and of some related differences concerning the role the courts should play in dismantling the dual systems. Public elementary and secondary schools are traditionally free and compulsory. Prior to "freedom of choice," children were assigned to their respective schools. This could be done with equanimity because, in principle at least, one school for a given grade level is substantially similar to another in terms of goals, facilities, course offerings, teacher training and salaries, and so forth. In this context, although reluctant to intervene, when the Constitution and mandates from the higher courts demanded it, we felt that desegregation could be accomplished, and that the requirements of the law would be met, without our being involved in a wide range of purely educational policy decisions. . . .
>
> Higher education is neither free nor compulsory. Students choose which, if any, institution they will attend. In making that choice they face the full range of diversity in goals, facilities, equipment,

course offerings, teacher training and salaries, and living arrangements, perhaps only to mention a few.

ASTA, 289 F. Supp. at 787-88.

The *ASTA* decision and its rationale were relied upon by the Fifth Circuit in the case at bar. *See Ayers v. Allain*, 914 F.2d 676, 683-684, 686, 687 (5th Cir. 1990).

II. THE NEW LEXICON OF RACE AND THE FUTURE SOUGHT FOR HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

A. There Is no Common Vocabulary in Current Discussions of, and Litigation About, Race and Higher Education

One of the more difficult problems that litigants and courts have in cases such as the one at bar is understanding the new meanings of old terms. There was a time, not too long ago, when there was at least an agreed upon vocabulary in cases dealing with race and access to educational institutions. In the case at bar and in the Alabama litigation, however, there are several examples of how the traditional language and concepts of educational desegregation cases no longer convey clear meaning. For instance, during the course of these cases, "desegregation" has meant a variety of things to the United States, and it now appears to have entirely different connotations for the United States and for the private petitioners and some of their supporting amici. The difference is most acute when the goal of "desegregation" is sought for historically white colleges on the one hand and for historically black colleges on the other.

B. To Neoseparatists, Desegregation Means the Fulfillment of the "Promise" of *Plessy v. Ferguson*

In the Alabama litigation, the private plaintiffs, with whom the United States intervened under 42 U.S.C. § 2000h-2 (1981), have made it clear that their concept

of "desegregation" requires the continued black identity and control of historically black institutions. The essence of their demanded remedy is for these institutions to retain their historical mission in the black community and for the scope and scale of their facilities and programs to be enhanced to the level of creating black "flagship" institutions. The testimony of the Chair of the Board of Trustees of ASU could not be clearer on this goal:

> A. [T]he state of Alabama owes Alabama State everything it provided, everything it failed to provide Alabama State under the *Plessy versus Ferguson* doctrine, they owe us that now. There may be some redeeming value in *Plessy versus Ferguson*, we may be the first institution to get out of *Plessy versus Ferguson* today what the state of Alabama didn't give it yesterday, because if the state of Alabama had lived up to what *Plessy versus Ferguson* commanded, which was the law at that time, separate but equal, Alabama kept its separate, but if it had made it equal, then Alabama State would have a medical school, it would have a law school, it would have all of these professional schools that the University of Alabama now has. . . .
>
> Q. What should the state of Alabama do toward doing away with vestiges of desegregation [sic]?
>
> A. . . . Now, I don't think there is any question that the state of Alabama ought to bring Alabama State University and Alabama A&M University up to the standards and the status of the University of Alabama and Auburn. They ought to fulfil [sic] that mission and they ought to carry out the intent of *Plessy versus Ferguson*. They ought to do that.

Testimony of Dr. Joe Reed, 1/12/91, pgs. 134-136.

The United States has never clearly stated its position on this demand for the continued racial mission and identity of the historically black institutions. When pressed, it has recited the baffling mantra of the *Revised Criteria Specifying the Ingredients of Acceptable*

Plans to Desegregate State Systems of Public Higher Education, 43 Fed. Reg. 6658, 6660 (1978) [hereinafter *Revised Criteria*], that on the one hand such schools are the primary evidence of uneradicated vestiges of illegal segregation and on the other that nothing in the remedy must impair the historic mission of these institutions.

C. There Is an Improper Focus on Institutional Rights Rather Than on Individual Opportunities

The customary language and concepts established in earlier desegregation cases do not fit well in the case at bar or in the Alabama case, because the real objective of some of the plaintiffs and their amici has shifted away from the initial objective of securing access to institutions and protecting educational opportunities once access has been secured. Their primary objective has now become the protection of the institutions themselves and the maintenance of a racial identity for the historically black colleges and universities. Regardless of whether this is a legally permissible goal—and the Fifth Circuit held emphatically that it is not [2]—it is hardly a concept that squares with the customary definition of "desegregation."

Although the United States waffles by citing both antithetical imperatives of the *Revised Criteria* on this issue,

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[2] In rejecting the argument for HBCUs to maintain their historical identity, Judge Duhe, writing for the *en banc* majority, held:

> Institutional differences remain, but in order to level those differences under principles of equal protection this Court would somehow have to adopt the plaintiffs' terms "Black School" and "White School" and attach legal significance to those terms. This Court therefore cannot adjust the equities in the manner the plaintiffs request unless we declare, with the force of law, that [HBCUs] shall henceforth be designated as Black Schools for black students, and shall at all times remain equal in funding, offerings and facilities with their counterparts designated as White schools. We need not cite the source for this revolting principle.

Ayers, 914 F.2d at 692.

this Court is confronted head on with the issue by the amicus curiae brief of the National Bar Association, the National Association for Equal Opportunity in Higher Education, and the Congressional Black Caucus, which puts it in unambiguous terms. Theirs is a clear request for this Court to secure for historically black colleges and universities an enhanced, richer and racially identifiable future.

D. Neither the Fourteenth Amendment nor Title VI of the Civil Rights Act of 1964 Protects Institutional Interests

These same arguments advanced by the private petitioners and their supporting amici in the case at bar were also raised in an earlier stage of the Alabama litigation. When the Alabama case went to trial the first time (in 1985) the district court granted the motions of Alabama State University and Alabama A&M University to be realigned as plaintiffs. On the appeal of one aspect of that case, however, the Eleventh Circuit held that this realignment was improper because neither the Fourteenth Amendment nor Title VI protected these institutional rights. In an opinion by Judge Frank M. Johnson, Jr., the court held that Alabama State University could not satisfy the standing requirements to bring actions of this type. ASU, as a creature of the state, could not raise a Fourteenth Amendment claim under Section 1983. *United States v. State of Alabama*, 791 F.2d 1450 (11th Cir. 1986), *cert. denied sub nom., Board of Trustees v. Alabama Bd. of Educ.*, 479 U.S. 1085 (1987).

> Nothing in Title VI or its legislative history suggests that Congress conceived of a state instrumentality as a "person" with rights under this statute. . . . Absent any indication of Congressional intent to grant additional rights under this statute to non-private state subdivisions against the state itself, we decline to in[illegible] a right of action by judicial fiat.

Id. at 1456.

One of the principal arguments advanced by the "institutional" plaintiffs in the Alabama litigation was that they in fact served as representative advocates for the rights of their students, faculty and staff. The court considered and rejected that as an adequate basis for standing. In an interesting—but equally impermissible—twist on the concept of representative standing, the class of institution-supporting plaintiffs and amici are now attempting to use their personal standing as a vehicle through which to advance institutional claims.

E. Historically Black Colleges Are Neither Exclusively Southern Institutions nor the Major Educational Venues for Black Students

Black colleges and universities are a national, and not simply a Southern, phenomenon. Nor indeed, as this Court recognized in *Brown*, was racial segregation simply a regional phenomenon.

> Segregation in Boston public schools was eliminated in 1855. Mass. Acts 1855, c. 256. But elsewhere in the North segregation in public education has persisted in some communities until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

Brown, 347 U.S. at 690 n.6. Until fairly recently, black students did not attend, in significant numbers, predominantly white colleges and universities in any part of the United States. As a result of this national exclusion, black colleges were established near black population centers. Although the majority of these schools were located in the South, because that is where most black people in America were living, it must be noted that the first of these institutions were set up in the Northern states. (*See* Appendix at 1a-2a.)

Historically black institutions at one time provided the college training for the vast majority of black students in the United States who went beyond secondary

school, but that is no longer the case. For example, only 40% of the black students enrolled in public four-year colleges in Alabama attend the two predominantly black institutions. Moreover, many of those attending these two schools and counting toward that 40% figure are from out of state.

III. FACTS ELICITED IN THE ALABAMA LITIGATION ARE RELEVANT TO THE COURT'S CONSIDERATION OF ISSUES RAISED IN THE CASE AT BAR

The United States and the private petitioners argue that vestiges (or "remnants") of segregation can be found in present day institutional characteristics, such as faculty composition and curricular offerings. The record developed in the Alabama litigation shows clearly that each of these characteristics is either a thoroughly national phenomenon (such as the low number of black faculty) or is based on such defective methodology as to be absolutely meaningless (such as the government's curriculum duplication analysis). A brief review of the record in the Alabama case on these issues, as well as on the government's reversal of position on institutional enhancement, may be of some relevance to the Court's determination of issues raised in the case at bar.

A. Underrepresentation of Blacks on College Faculties Is a National Issue

In both the Alabama and Mississippi cases, the private petitioners and the United States raised the issue of underrepresentation of blacks on the faculties of historically white institutions. The record is clear that there is fierce national competition among institutions of higher education and between academic institutions and other private and governmental employers for the relatively few potential black faculty members in the available labor pool. To the extent that any institution might appear to

have low numbers of black faculty, it is important for the Court to recognize the national dimensions of this issue and the relative economic power of Alabama and Mississippi institutions to compete.[3]

The immediate cause of the relative lack of black faculty members nationally has been the very low total numbers of blacks receiving terminal degrees in academic areas qualifying them for faculty appointments. According to the most recent data of the United States Department of Education, in the 1988-89 academic year only 2.8 percent of all doctorates awarded in the United States were awarded to blacks. Looking at specific institutions, the data show that in 1988-89, a total of 10 (or 7.9%) of the Ph.D.'s awarded by the University of Alabama (Tuscaloosa) went to blacks. In that same year Harvard awarded 9 doctoral degrees (or 2%) to blacks, MIT awarded 6 doctorates (or 1%) to blacks, the University of Minnesota awarded 1 black a doctoral degree, and the University of Wisconsin at Madison awarded only 8 out of 667 doctorates to blacks. (*See* Appendix at 4a.)

The paucity of black representation in doctoral programs is related to the underrepresentation of blacks in all levels of higher education. Dr. Bernard Sisken, an expert witness on behalf of the University of Alabama, testified in the Alabama litigation that approximately 80% of the disparity between black and white participation in higher education nationally can be attributed to economic factors. He found that because of the continuing, and in some respects increasing, gap between the economic status of whites and blacks in the United States, black students are confronted with far more difficult "opportunity costs" decisions in pursuing academic careers. This is particularly true for those faced with the choice of continuing their schooling to obtain a terminal degree. (*See* Appendix at 5a-6a.)

[3] National faculty salary data assembled by the American Association of University Professors show that public universities in Mississippi and Alabama are not able to compensate faculty with salaries that are competitive with those offered by the majority of similar institutions in the United States. (*See* Appendix at 3a.)

There is no question that far too few blacks are on the faculties of American colleges and universities. Their low representation, however, is a problem facing virtually every college and university in the country, and is in no way a remnant of the history of higher education in a few Southern states.

B. The Flaws in the "Elimination of Program Duplication" Argument

The United States has long argued that offering academic programs and courses with similar names at both predominantly white and predominantly black institutions has a segregative effect. Underlying the government's theory is its presumption (without any substantial supporting evidence) that undergraduate students are attracted to particular institutions primarily by the catalog descriptions of academic course offerings. In furtherance of this argument, in both the Alabama and Mississippi cases, the United States presented evidence in which it undertook to make academic program comparisons between predominantly white and predominantly black institutions. The same expert witness, Dr. Clifton Conrad, was responsible for both analyses and gave testimony in both cases. He used essentially the same methodology in both states. (*See* Appendix at 7a.) The United States' factual record on the issue of program duplication is almost exclusively based on Dr. Conrad's analysis and testimony.

In neither his Alabama nor Mississippi analysis did Dr. Conrad take into account any distinctions in institutional missions, course or program content, level of academic preparation of students, or any other substantive factors that might distinguish one institution or one aca-

demic program from another. He simply based his program duplication analysis on a comparison of course and program titles and program inventory codes. (*See* Appendix at 8a-10a.)

Moreover, Dr. Conrad's conclusions, which were based largely on a comparison of both "core" and "non-core" course offerings at different institutions, were virtually predetermined by the definition he used for each category and the courses he assigned to each. Conrad defined "core" academic programs as those that could be expected at any four-year college. "Non-core" programs were defined as those that were not an essential element of an institution's curriculum. Dr. Conrad then unilaterally made determinations about which courses were core and which were non-core. He categorized programs such as Portuguese and electron physics as "core" programs, while he slotted courses in education, business and engineering (which account for the major fields of 75% of American undergraduate students) into the "non-core" group. Hence, it was preordained that any college initially established as a teachers' college (which includes most comprehensive public institutions) would have high numbers of non-core programs. By excluding the highest demand programs from his categorization of "core" programs, Dr. Conrad assured a finding of significant program duplication among non-core programs offered by colleges of similar size.

In both Alabama and Mississippi, Dr. Conrad was careful not to attempt to validate his program duplication analysis by also comparing institutions that shared the same racial history. That is, he did not test his conclusion that the program duplication he identified between traditionally white institutions and historically black institutions was related to the differing racial histories. Had he done so, he would have discovered that his program duplication methodology would produce findings of large amounts of program duplication between most institutions

of comparable size, irrespective of their racial history or present racial composition. In Alabama, Dr. Conrad acknowledged that, had he made such a comparison, he would have found a great deal of program duplication between the two predominantly black schools. (*See* Appendix at 11a.) He also acknowledged that program duplication was endemic to higher education nationally. He could not identify any state which, when subject to his curricular duality analysis, would be shown to have a "unitary" system of higher education.

C. The United States Has Changed Its Position on the Segregative Effect of Facility and Funding Disparities

In the case at bar, the United States has completely reversed its position on the need for and permissibility of economic enhancement of historically black institutions in the desegregation process. The government now says that "[i]t would be the height of irony for the resounding mandate of *Brown* that separate schools are inherently unequal to be taken, 37 years later, as dictating a focus on whether funding of separate historically black and historically white schools is equal." Brief of the United States at 32 (citation omitted).

We agree.[4] But it is precisely this ironic outcome that the United States has advocated for the last decade in the Alabama litigation, and it is that same ironic focus that generated much of the government's evidence in the Mississippi and Louisiana cases. In furtherance of its enhancement demand in the Alabama case, the government offered the testimony of two principal witnesses: Dr. Larry Leslie in the field of institutional funding and

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[4] In the Alabama litigation, the University of Alabama warned of the resegregation that might result from demands to transform the historically black institutions into black "flagship" institutions offering essentially the same range of graduate and professional programs currently offered by the University of Alabama.

Dr. Harvey Kaiser on the issue of institutional facilities. Reading their testimony on behalf of the government, advocating enhancement of the HBCUs as a means to attract white students, reveals how complete a reversal in its position the government has made to arrive at its new recognition of the impropriety of enhancement. (*See* Appendix at 12a.)[5]

While the United States' belated recognition of the ironic consequence of institutional enhancement is welcomed, it stands in contrast to the continued demand by the private petitioners for institutional enrichment. There is now a great tension between the position taken by the United States on instituitonal enhancement and that taken by the private petitioners and their supporting amici. (*See* Appendix at 15a-16a.)

Furthermore, over time the government has clearly been of two minds on the issue of the continued racial identifiability of historically black colleges and universities. The long litany of executive orders, resolutions, and articulated positions taken by a series of national administrations on the future of HBCUs, as presented in the amicus brief of the National Bar Association, *et al.*, is ample evidence of the internal inconsistencies that have plagued the government in this and similar cases. It is difficult, if not impossible, to square the government's insistence that all institutions ought to lose their racial identity with its continued insistence that historically black colleges and universities have an important and legally permissible role in modern American higher education.

The fundamental changes in the government's position through the years in this case and in other states, and the substantial differences between the government's posi-

[5] Even the government's own experts agreed that a continuing racial mission for the HBCUs might impede their ability to recruit white students, regardless of enhancement efforts. (*See* Appendix at 13a-14a.)

tion and that of the private petitioners, serves only to illustrate the practical wisdom of the *ASTA* approach to higher education desegregation cases. Where institutional interests have been substituted for individual student rights as the focus of its case, it has become impossible for the United States to maintain a consistent, intelligible and effective position.

The results advocated by the petitioners in the case at bar and by the plaintiffs in the Alabama litigation provide a receipe for the resegregation of numerous institutions of higher education across the country. The Fifth Circuit saw clearly that it was being asked to validate, and indeed to require, the continued racial identifiability of the historically black colleges and universities in Mississippi. The consequence of requiring a state to maintain and enrich certain institutions because of their racial heritage would be to bind that state, its people, and those colleges inextricably to a past that they have long struggled to leave behind.

The University of Alabama is not so naive as to assume or to assert to the Court that it has somehow found full and satisfactory solutions to the many issues of race in colleges and universities. However, it has had a special, and even emblematic, role in the desegregation of higher education in America. It has also had some significant successes in the recruitment, enrollment and graduation of black students and in increasing the number of potential black faculty with terminal degrees in the national labor pool.

The Board of Trustees of the University of Alabama respectfully requests that this Court affirm the decision of the Fifth Circuit, and by so doing reaffirm the essential wisdom of *ASTA* that the proper inquiry in higher education desegregation cases is on the full protection of the rights of access and enjoyment of educational opportunities by all students, irrespective of race. As this

Court held long ago in *Hawkins*, the obligations of desegregation in higher education are both straightforward and immediate.

CONCLUSION

For the foregoing reasons, Amicus supports the Respondents' request that the decision of the Fifth Circuit be affirmed.

Respectfully submitted,

C. GLENN POWELL
STANLEY J. MURPHY *
THE UNIVERSITY OF ALABAMA SYSTEM
Office of Counsel
401 Queen City Ave.
Tuscaloosa, AL 35401
(205) 348-8351
Attorneys for Amicus Curiae

* Counsel of Record

APPENDIX

APPENDIX

Testimony of Dr. James A. Anderson
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 11/29/90)

* * * *

[643] Cross Examination-Anderson

* * * *

A. The first black institutions actually develop[ed] in the northern states, Wilber Force [sic], [Cheyney] State, and Lincoln, so that the first black colleges actually developed in the northern states.

Q. Quakers developed some, around the Philadelphia area?

A. They developed [Cheyney] State. Wilber Force [sic] was developed by the African Methodist Episcopal church there, and so it's not that—that doesn't account for the development, that accounts for the distribution, and so there are fewer black colleges in the northern states than [644] the southern states, but the fact that there were fewer blacks in the north accounts more for the distribution, I think, than for the establishment.

Q. Okay. That's a fair distinction and I appreciate you making that. Nonetheless, the phenomenon of the black higher education institutions or indeed lower education institutions was [a] national rather than southern phenomenon?

A. Well, that needs to be qualified also. At that particular time we go to the lower educational systems like the common schools, and as I said in the 19th Century very few high schools. It was quite the practice in the north to have all black common schools as well.

Q. Yes, sir. I guess the point I'm trying to make is a sample [sic] and elementary one. We're talking about a national phenomena [sic] rather than regional phenomena, albeit there were far more of these kind of institutions in the south because of the population densities?

A. Yes. Now, we may be saying different things here, because I should find out what you are talking about when you say national phenomena? A phenomena, meaning what?

Q. Meaning the development of and maintenance of institutions principally enrolling black students.

A. Yes.

Q. In fact, many of the national institutions, including [645] the Armed Forces of the United States, the judiciary of the United States, many of our national institutions were racially segregated, or at least excluded black people or assigned black people particular positions on account of their race during much of the country's history?

A. Yes, that's true.

Q. In fact, the Armed Forces really did not attempt a genuine effort at thorough desegregation until the Korean conflict, is that not the case?

A. Yes, you're right. I think it was after Truman's executive order.

AAUP Faculty Salary Survey 1990-91

Compared to all Doctoral Universities

Percentage of Doctoral Universities in the United States that have higher average faculty salaries than the average faculty salaries at the institution shown.

	Professor	Associate Professor	Assistant Professor	Instructor
University of Mississippi	80-99%	80-99%	80-99%	80-99%
Mississippi State University	80-99%	80-99%	80-99%	80-99%
Southern Mississippi University	80-99%	80-99%	80-99%	80-99%
University of Alabama	60-79%	60-79%	60-79%	80-99%

Source: American Association of University Professors annual Faculty Salary Survey, published in *Academe*, March-April 1991.

Doctoral Degrees Awarded at Selected Institutions
1988/89

	Total Doctorates	Black Doctorates	Percent Black
University of Alabama	126	10	7.9%
*University of Arkansas	84	2	2.4%
University of California, Berkeley	838	19	2.3%
University of Chicago	310	8	2.6%
*University of Georgia	340	11	3.2%
Harvard University	461	9	2%
University of Illinois	647	10	1.5%
MIT	492	6	1%
University of Michigan	527	22	4.2%
University of Minnesota	543	1	<1%
*University of Missouri	236	3	1%
University of Mississippi	63	7	11.1%
University of Nebraska	236	6	2.5%
Northwestern University	358	10	3.6%
Ohio State University	608	23	3.7%
*University of Oklahoma	114	3	2.6%
University of Pennsylvania	414	8	1.9%
*University of South Carolina	169	7	4.1%
Stanford University	540	8	1.5%
**University of Tennessee, Knoxville	209	8	3.8%
University of Virginia	242	2	<1%
University of Wisconsin	667	8	1%
Yale University	317	4	1%

*Institutions in states which have been found by the Department of Education, Office for Civil Rights to have a "unitary" system of higher education

**Principal doctoral granting institution operated by the State of Tennessee, which appears as an Amicus supporting the United States in this appeal

Source: U.S. Department of Education, National Center for Education Statistics.

Testimony of Dr. Bernard Siskin
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 4/8/91)

* * * *

[95] Cross Examination-Siskin

Q. Now, again, Doctor, when you refer to 1107, and these are people that have got the Ph.D's, this is not a field of people who are potential, who are seeking university employment, or is it?

A. No, it's not, but there are studies done to the effect of that on the race. In other words, giving you the Ph.D., how likely are you to go into and seek a position in industry as opposed to academia and studies have shown that blacks are less likely to seek positions in academia with Ph.D's than are white. So that should work the reverse in this data set, that should actually lower the black expectant.

[113] Cross Examination-Siskin

A. There are a couple of things which makes me think about the impact, particularly at the Ph.D. level, okay? . . .

Most of the studies that have been done that I have seen, I just played with some numbers in the last data base, the Conference on Minorities in Education Studies show that the major reason for under utilization for blacks in colleges, high school, and furthermore at the universities, Ph.D. levels, is an income problem. In the mid 80's in the data, in some studies I have done in the [114] mid 80's, 80 percent of the disparity in college, at least 80 percent of the disparity in college participation between blacks and whites can be accounted for because of income differentials between blacks and whites. When you control for income disparities, it accounts for—Almost 80 percent of the overall disparities from blacks and whites is accountable by income differences, black and whites, and the income gap in this country is substantial between blacks and whites and that's everywhere, un-

fortunately, in this country. . . . The choice to get a Ph.D. is heavily influenced by your income since there is a big income trade off, lifetime trade off, income characteristics, and the probability of getting a Ph.D. is highly related to the income of the family. All of those factors mitigate heavily against the black population because of the poverty situation and the black situation in this country. Those factors appear to me from everything I have seen overwhelmingly more significant in impact. If it was really simply a result [115] of segregation, then you would expect to see vast regional differences in representation of blacks in colleges, and universities, and Ph.D. programs. You don't see that.

Testimony of Dr. Clifton Conrad
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 12/19/90)

Re-Cross Examination-Conrad

[625]

Q. Very briefly, Doctor, very, very briefly. You testified that you have conducted similar, albeit not identical, analyses in Mississippi and Louisiana of curricular duplication and program quality. Is that correct?

A. Yes.

Testimony of Dr. Clifton Conrad
Knight v. Alabama, No. CV-83-M-1676-S
(Deposition taken on 9/19/90 in Birmingham, Ala.)

[76]

Q. Did you make any analysis beyond the CIP code categorization to find out really what was the substance of the courses offered within particular programs? By that, I mean did you look at course syllabi or the particular pedagogical bent of a department in an institution?

A. No.

Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 12/18/90 and 12/19/90)

Cross Examination-Conrad

[338]

Q. You used also the concept of service area in your direct examination. As we go through your reports, we'll talk about it in more detail. But did you make any analysis of where particular institutions in Alabama draw their students from, and if so, did that play any role in your duplication analysis?

A. As I have testified before, I haven't, including at my deposition.

* * * *

[342]

Q. Did you evaluate the extent to which any institutions in Alabama may have such a correlative with race in terms of their future mission, their present status, and their history, and to see whether or not that had an impact on student choice?

A. I have not systematically looked at that question.

* * * *

[352]

Q. As a follow up to another question I asked you about service areas, my presumption is, is that in addition to not taking into account a source within Alabama of an institution's students, you did not take into account the number of students who come to an institution from out of state in making any of your analyses?

A. I didn't, other than having a kind of general awareness that some institutions drew more heavily from out of state.

* * * *

[390]

Q. Did you, in your coming up with a definition of core programs, were you at all influenced by levels of student demand for particular programs?

A. In terms of what is core?

Q. Yes.

A. No, no.

* * * *

[393]

Q. Do I understand you to say that you undertook no test or made no analysis to see if it might be some factor other than a particular racial history which has resulted in the present way institutions look in Alabama; you have controlled for no other factor?

A. . . . I have certainly not, as you can tell in the text, introduced controls with regard to institutional type.

* * * *

[414-415]

Q. . . . But is it accurate for me to say, is it not, Doctor, that your use of student quality data, pardon me, student ability data was used in your institutional quality analysis, but not in any sort of institutional mission differentiation analysis?

A. That's correct. I think a better word would be student achievement as opposed to student quality. I wish I had used it.

Q. Student achievement levels?
A. Uh-huh.
Q. Yes, sir. Do you know or did you combine with your student analysis any sort of understanding of admissions criteria applied by the institutions you studied here?
A. No.

* * * *

[472]

Q. . . . Particularly in the area of faculty quality, where you have evaluated terminal degrees and the source of the terminal degrees, and in the related area of faculty research productivity. When you make those comparisons in Alabama, to what extent, if any, did you take into account different institutional emphases and reward systems?
A. I didn't.

Testimony of Dr. Clifton Conrad
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 12/18/90)

[388] Conrad

Q. Could I not substitute for your historically black schools, the two here, could I not substitute essentially any two schools in the right column other than the two flagships, I'm saying Auburn and University of Alabama main campus now, and essentially arrive at the same conclusion?
A. I don't know, that would be conjecture, but I would speculate, if you'd like me to that, you would find a fair amount of, substantial amount of duplication, because you have got a lot of duplication in the state between and among your white institutions. There is no mistake about that. In fact, to pick up an earlier point, you could do a study with all sort of comparisons and depending on who you're comparing, you might find more dual systems than unitary systems. And so what?

Testimony of Dr. Larry Leslie
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 10/31/90)

[98] Cross Examination-Leslie

Q. Dr. Leslie, does this funding pattern, [which historically resulted in unequal funding for HBCUs] affect the ability of the African American schools to attract white students?

A. Very definitely, yes.

Testimony of Dr. Harvey Kaiser
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 11/6/90)

[282] Cross Examination-Kaiser

Q. In order to attract white students, do the TBI's have to be the most attractive institution in the state?

A. I think I talked earlier about it's more important, the appearance and attractiveness of the TBI's are more important to attract other race students than the black students attending the TWI's.

Testimony of Dr. Larry Leslie
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 11/1/90)

[382] Cross Examination-Leslie

Q. Okay. Dr. Leslie, do you see a conflict between your conclusion that the funding available to the [PBI's] affects their ability to attract white students and a mission of those institutions to remain a black institution controlled by black individuals?

A. I think there is a potential difficulty there. I don't know that there is necessarily a difficulty, but there certainly is a potential.

Q. At least in theory, in your approach to that, there is a conflict, there could be a conflict in those different objectives?

A. It would depend upon degree, I suppose, of, yes.

Testimony of Dr. Harvey Kaiser
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 11/6/90)

[150] Cross Examination-Kaiser

Q. I would expect that especially in discussing other race students, the commitment of the institution to recruiting other race students would have an impact on its ability to attract those other race students?

A. Yes. . . .

Q. The efforts of an institution to maintain its image as a predominantly black institution, for instance, might affect its attractiveness to other race students, to white students?

[151]

A. Yes, it could.

Testimony of Dr. Clifton Conrad
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 12/18/90)

[342] Cross Examination-Conrad

Q. . . . If an institution was to have an articulated mission involving its race, the race of its community members and the racial orientation of its history, would that be a factor which might tend to influence student choice?

A. Yes.

Testimony of Dr. Aldon Morris
Knight v. Alabama, No. CV-83-M-1676-S
(N.D. Ala. dated 12/5/90)

[Dr. Morris appeared as an expert witness on behalf of the private plaintiffs, A&M and ASU.]

* * * *

[121] Direct-Morris

Q. And I think, I'm sure both Auburn and University of Alabama, there may be some debate between themselves, but I expect both of them would consider themselves flagship institutions. Let me ask you this: What would it take to make Alabama State or Alabama A&M a flagship institution?

A. The same thing that it takes to make any institution a flagship institution. Millions of dollars that is spent, that is spent on attracting some of the most distinguished [122] faculty from throughout the land, and I mean nationally and internationally. That is one very important thing that it would take.

It would take having the resources necessary to build the kind of computer system that is now needed in a university, high powered computer systems and laboratories of computers and so on that other people can use and be trained on.

It would take an administration and a leadership whose goal it was to make it happen and who had the resources to make it happen. So that—and it would also take a particular kind of attitude, these are so-called flagship institutions.

I function in a number of them now. They are able to go to the state and say hey, look, you know, we're one of the best in the country and therefore we're an asset to this state and you have got to come up with the resources and so on, so it also has to do with this kind of notion that we are good. We are leaders in this field and everybody else should see us that way and provide the resources to make the function true.

Q. Would that make the university attractive to all students, black, white and any and everything else racial wise?

A. If you built a Harvard or Yale, a Berkeley, a [123] University of Wisconsin, in Montgomery at Alabama State, it's like the old story about if you write a better book, or if you build a better mouse trap, that folks will make a beating path to your door step. That's what would happen. And you would have large numbers . . . of white students coming in, the notion is if you build it, the people will come.

(15)

Nos. 90-1205, 90-6588

MOTION FILED
OCT 9 1991

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA,

Petitioner,

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *et al.*,

Respondents.

JAKE AYERS, *et al.*,

Petitioners,

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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MOTION FOR LEAVE TO FILE OUT OF TIME BRIEF AMICUS CURIAE, AND BRIEF AMICUS CURIAE, OF JOHN F. KNIGHT, JR., AND ALEASE S. SIMS IN SUPPORT OF PETITIONERS

DONALD V. WATKINS
1205 North 19th Street
Birmingham, AL 35234
(205) 323-5963

*JAMES U. BLACKSHER
LESLIE M. PROLL
5th Floor Title Bldg.
300 21st Street North
Birmingham, AL 35203
(205) 322-1100

DEMETRIUS NEWTON
Suite 207
1820 7th Avenue North
Birmingham, AL 35203
(205) 252-9283

Counsel for John F. Knight, Jr. and Alese S. Sims

**Counsel of Record*

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

Nos. 90-1205, 90-6588

UNITED STATES OF AMERICA,

Petitioner,

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *et al.*,

Respondents.

JAKE AYERS, *et al.*,

Petitioners,

v.

RAY MABUS, GOVERNOR OF MISSISSIPPI, *et al.*,

Respondents.

On Writ of Certiorari To the United States Court of Appeals for the Fifth Circuit

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MOTION FOR LEAVE TO FILE OUT OF TIME BRIEF AMICUS CURIAE OF JOHN F. KNIGHT, JR., AND ALEASE S. SIMS IN SUPPORT OF PETITIONERS

John F. Knight, Jr., and Alease S. Sims, plaintiffs in *Knight v. Alabama*, C.A. No. CV 83-M-1676-S (N.D. Ala.), the Alabama higher education desegregation case, move for leave to file out of time the attached brief amicus curiae in support of the petitioners

Counsel for the private plaintiffs have consented to the filing of the attached brief. Due to the shortness of time,

undersigned counsel have been unable to obtain the consent of the Solicitor General of the United States or counsel for the Mississippi respondents.

The purpose of this amicus brief is simply to alert this Court to the unreliability of materials contained in two amicus briefs recently filed on behalf of the respondents, one by the University of Alabama and the other by the Governor of Louisiana.

Those two amicus briefs (University of Alabama and Governor of Louisiana) rely heavily on snippets of testimony plucked from the record of the Alabama case. That case, which took five and one-half months to try, is under submission by the district court and a decision is expected shortly. Notwithstanding the inappropriateness of attempting to characterize evidence in a case before findings of fact are made by the district judge, the University of Alabama and Governor of Louisiana have filed amicus briefs in this Court replete with appendices that extract distorted bits and pieces from the Alabama trial record; they present these fragments in support of factual assertions that are vigorously contested by the Alabama plaintiffs.

The Knight and Sims amici therefore seek to file this brief to provide necessary information to this Court by which it can recognize the incompleteness of the appendix material—and the unreliability of the factual assertions based thereon—contained in the amicus briefs filed by the University of Alabama and the Governor of Louisiana.

Undersigned amici have not previously filed an amicus brief in this case. This brief could not have been filed before now because it is only the recent filing of the University of Alabama's and Governor of Louisiana's amicus briefs that has occasioned the need for us to file this amicus brief in response.

Moreover, in an effort to comply substantially with the timeliness requirement of Rule 37, this motion and the accompanying amicus brief are being filed within the time allowed for the petitioners to file their reply briefs.

Wherefore, movants respectfully request that they be permitted to file the attached brief amicus curiae out of time.

Respectfully Submitted,

DONALD V. WATKINS
1205 North 19th Street
Birmingham, AL 35234
(205) 323-5963

*JAMES U. BLACKSHER
LESLIE M. PROLL
5th Floor Title Bldg.
300 21st Street North
Birmingham, AL 35203
(205) 322-1100

DEMETRIUS NEWTON
Suite 207
1820 7th Avenue North
Birmingham, AL 35203
(205) 252-9283

Counsel of Record

Counsel for John F. Knight, Jr. and Alease S. Sims

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BRIEF AMICUS CURIAE OF JOHN F. KNIGHT, JR. AND ALEASE S. SIMS IN SUPPORT OF THE PETITIONERS

STATEMENT OF INTEREST

John F. Knight, Jr., and Alease S. Sims are plaintiffs and plaintiffs-intervenors in Knight v. Alabama, C.A. No. CV 83-M-1676-S (N.D. Ala.), the pending action concerning desegregation of public higher education in Alabama. They are certified representatives of the class of all black citizens of Alabama and all students, faculty and alumni of

the two historically black universities in Alabama, Alabama State University and Alabama A&M University.

The Alabama higher education desegregation case has recently been tried on the merits and is currently under submission.[1] The trial, before United States District Judge Harold Murphy of Rome, Georgia, took five and one-half months and ended in April 1991. Judge Murphy has indicated that his decision will be rendered shortly.

This Court's decision in the instant appeal likely will bear on the outcome of the Alabama case. But the amici's interest in the Mississippi appeal is an extremely limited one: to point out the misuse of evidence from the record of the Alabama case in the amicus briefs filed by the University of Alabama and the Governor of Louisiana, and to emphasize the critical dependency of these cases on the particular facts in each state.

The amici support the petitioners.

ARGUMENT

1. This Court should disregard the amicus brief filed by the University of Alabama and the amicus brief filled by the Governor of Louisiana as prejudicial attempts to represent as actual facts fragments of evidence that have never been the basis of adjudicated findings of fact.

These two amicus briefs submit to this Court lengthy appendices containing distorted snippets from the massive record of evidence presented to the district court in Alabama during a five and one-half month trial. There were 88 days of testimony, 170 witnesses, and thousands of exhibits, producing a transcript over 20,000 pages long. Judge Murphy has notified the parties that he hopes to render findings of fact and conclusions of law shortly.

[1] This was the second trial. The first trial, in 1985, lasted a month and resulted in a finding of liability in December 1985, but a new trial was ordered when the district judge was disqualified. United States v. Alabama, 628 F. Supp. 1137 (N.D. Ala. 1985), 828 F. 2d 1532 (11th Cir. 1987), cert. denied, 487 U.S. 1210 (1988).

Under these circumstances, it would be inappropriate for this Court to rely in any way on the Alabama and Louisiana amici's one-sided and hotly-contested characterization of the facts underlying the higher education controversy in Alabama.

For example, appended to the University of Alabama's brief is one page of transcript from the testimony of one of the Knight plaintiffs' key witnesses, the expert historian, Dr. James D. Anderson. Dr. Anderson testified for three full days, and his testimony covers 668 pages of the transcript. The fragment offered by the University of Alabama is taken out of context and is cited in a way that misrepresents the thrust of Dr. Anderson's opinions. Similar points could be made about the other record excerpts in amicus briefs of both the University of Alabama and Louisiana amici.

2. Even if the Alabama and Louisiana amici's snippets of testimony were not so distorted, facts relating to the Alabama case would be of scant value to this Court in deciding the Mississippi case. The complicated issues presented by cases challenging the vestiges of de jure segregation and official white supremacy in public higher education are extraordinarily fact-intensive. What constitutes an unconstitutional continuation of historical policies and practices designed by white supremacist state governments to subordinate African Americans by denying them equal access to higher education depends on the historical facts and current circumstances found in each state. Therefore the persistence of unconstitutional racial discrimination in statewide systems of higher education requires an intensely local appraisal of the facts in each state.

The University of Alabama and the Governor of Louisiana have represented that "information" they have selected from the records of the Alabama litigation will assist this Court in the Mississippi case. In truth their briefs

would cloud the issues and introduce error, distortion, and irrelevancy.[2]

CONCLUSION

For these reasons, this Court should ignore the factual representations in the amicus briefs of the University of Alabama and the Governor of Louisiana.

Respectfully submitted,

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Birmingham, AL 35234
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*JAMES U. BLACKSHER
LESLIE M. PROLL
5th Floor Title Bldg.
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(205) 252-9283

Counsel of Record

Counsel for John F. Knight, Jr. and Alease S. Sims

[2] The amicus brief of the Governor of Louisiana also cites fragments of testimony from several other higher education desegregation cases, which appear to suffer from the same defects as the portions he selects from the Alabama case.